

# CRAVATH, SWAIN & MOORE

ONE CHASE MANHATTAN PLAZA

NEW YORK, N. Y. 10005

APR 10 1984 - 1 25 PM

INTERSTATE COMMERCE COMMISSION

14307

RECORDATION NO. 1425

COUNSEL  
MAURICE T. MOORE

TELEPHONE  
212 422-3000

TELEX  
RCA 233663  
WUD 125547  
WUI 620976

CABLE ADDRESSES  
CRAVATH, N. Y.  
CRAVATH, LONDON E. C. 2  
2 HONEY LANE, CHEAPSIDE  
LONDON EC2V 8BT, ENGLAND  
TELEPHONE: 1-606-1421  
TELEX: 8814901  
RAPIFAX/INFOTEC:  
1-606-1425

RALPH L. McAFEE  
HENRY W. DEKOSMIAN  
ALLEN F. MAULSBY  
STEWART R. BROSS, JR.  
HENRY P. RIORDAN  
JOHN R. HUPPER  
SAMUEL C. BUTLER  
WILLIAM J. SCHRENK, JR.  
BENJAMIN F. CRANE  
JOHN F. HUNT  
GEORGE J. GILLESPIE, III  
RICHARD S. SIMMONS  
WAYNE E. CHAPMAN  
THOMAS D. BARR  
MELVIN L. BEDRICK  
GEORGE T. LOWY  
ROBERT ROSENMAN  
JAMES H. DUFFY  
ALAN J. HRUSKA  
JOHN E. YOUNG  
JAMES M. EDWARDS  
DAVID G. ORMSBY  
DAVID L. SCHWARTZ  
RICHARD J. HIEGEL  
CHRISTINE BESHAR  
ROBERT S. RIFKIND  
DAVID BOIES

DAVID O. BROWNWOOD  
PAUL M. DODYK  
RICHARD M. ALLEN  
THOMAS R. BROME  
ROBERT D. JOFFE  
ROBERT F. MULLEN  
RONALD S. BOWEN  
JOSEPH R. SAHID  
PAUL C. SAUNDERS  
MARTIN L. SENZEL  
DOUGLAS D. BRADY  
ALAN E. STEPHENSON  
RICHARD L. HOFFMAN  
JOSEPH A. MULLINS  
MAX R. SHUM  
WILLIAM J. DICKEY  
STUART W. GOLD  
JOHN W. WHITE  
JOHN E. BEERBOWER  
EVAN R. CHESLER  
PATRICIA GEOGHEGAN  
D. COLLIER KIRKHAM  
MICHAEL L. SCHLER  
DANIEL P. CUNNINGHAM  
KRIS F. HEINZELMAN  
B. ROBBINS KIESSLING  
ROGER D. TURNER

14307

FILED 1425

APR 10 1984 - 1 25 PM

INTERSTATE COMMERCE COMMISSION

4-101A0061

14307

APR 10 1984 - 1 25 PM

100.0010 1984 - 1 25 PM

INTERSTATE COMMERCE COMMISSION

14307

RECORDATION NO. 1425

APR 10 1984 - 1 25 PM

INTERSTATE COMMERCE COMMISSION

April 6, 1984

Missouri-Kansas-Texas Railroad Company  
Lease Financing Dated as of March 15, 1984  
13-1/8% Conditional Sale Indebtedness  
Due June 15, 1999

APR 10 1 26 PM '84  
FEE OPERATION 37  
L.C.O.

Dear Mr. Bayne:

Pursuant to 49 U.S.C. § 11303 and the Commission's rules and regulations thereunder, as amended, I enclose herewith on behalf of Missouri-Kansas-Texas Railroad Company, for filing and recordation counterparts of the following documents:

1. (a) Conditional Sale Agreement dated as of March 15, 1984, between The Connecticut Bank and Trust Company, National Association, as Trustee, and General Motors Corporation (Electro-Motive Division), as Builder; and

(b) Agreement and Assignment dated as of March 15, 1984, between General Motors Corporation (Electro-Motive Division), as Builder, and Mercantile-Safe Deposit and Trust Company, as Agent.

2. (a) Lease of Railroad Equipment dated as of March 15, 1984, between Missouri-Kansas-Texas Railroad Company, as Lessee, and The Connecticut Bank and Trust Company, National Association, as Trustee; and

(b) Assignment of Lease and Agreement dated as of March 15, 1984, between The Connecticut Bank and Trust Company, National Association, as Trustee, and Mercantile-Safe Deposit and Trust Company, as Agent.

*Handwritten signatures and initials:*  
F. Bayne  
C. Dunsen

The names and addresses of the parties to the  
aforementioned agreements are as follows:

1. Agent:

Mercantile-Safe Deposit and Trust Company  
Two Hopkins Plaza  
Baltimore, Maryland 21203

2. Trustee-Lessor:

The Connecticut Bank and  
Trust Company, National Association,  
One Constitution Plaza,  
Hartford, Connecticut 06115

3. Builder-Vendor:

General Motors Corporation  
(Electro-Motive Division)  
La Grange, Illinois 60525

4. Lessee:

Missouri-Kansas-Texas Railroad Company  
701 Commerce Street  
Dallas, Texas 75202

Please file and record the documents referred to  
in this letter and index them under the names of the Agent,  
the Trustee-Lessor, the Builder-Vendor and the Lessee.

The equipment covered by the aforementioned  
documents consist of the following:

8 3,700 h.p. Model GP-39-2 diesel electric  
locomotives bearing the Lessee's identification numbers  
MKT360-367, both inclusive, and also bears the legend  
"Ownership Subject to a Security Agreement Filed with The  
Interstate Commerce Commission".

There is also enclosed a check for \$100 payable to  
the Interstate Commerce Commission, representing the fee for  
recording the Conditional Sale Agreement and related Agree-  
ment and Assignment (together constituting one document),  
and the Lease of Railroad Equipment and related Assignment  
of Lease and Agreement (together constituting one document).

Please stamp all counterparts of the enclosed documents with your official recording stamp. You will wish to retain one copy of the instruments for your files. It is requested that the remaining counterparts be delivered to the bearer of this letter.

Very truly yours,

*Laurance V. Goodrich*

Laurance V. Goodrich  
as Agent for  
Missouri-Kansas-Texas  
Railroad Company

James H. Bayne, Secretary,  
Interstate Commerce Commission,  
Washington, D. C. 20423

Encls.

14307 *B*  
REGISTRATION NO. \_\_\_\_\_ Filed 1925

APR 10 1984 -1 25 PM

INTERSTATE COMMERCE COMMISSION

---

[CS&M Ref. 2044-528]

LEASE OF RAILROAD EQUIPMENT

Dated as of March 15, 1984

Between

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY,  
as Lessee,

And

THE CONNECTICUT BANK AND TRUST COMPANY,  
NATIONAL ASSOCIATION,  
not in its individual capacity but solely  
as Trustee under a Trust Agreement dated as  
of the date hereof,  
as Lessor.

---

The rights and interests of the Lessor under this Lease are subject to a security interest in favor of Mercantile-Safe Deposit and Trust Company, as Agent for a certain Institutional Investor. The original of this Lease is held by said Agent.

---

## LEASE OF RAILROAD EQUIPMENT

### TABLE OF CONTENTS\*

	<u>Page</u>
PARTIES .....	L-1
PREAMBLES .....	L-1
GRANTING CLAUSE .....	L-1
SECTION 1. NET LEASE .....	L-2
SECTION 2. DELIVERY AND ACCEPTANCE OF UNITS .....	L-3
SECTION 3. RENTALS .....	L-3
3.1. Amount and Date of Payment .....	L-3
3.2. Payments on Nonbusiness Days .....	L-5
3.3. Instructions To Pay Vendor and Lessor .....	L-5
3.4. Payment in Immediately Available Funds .....	L-5
SECTION 4. TERM OF LEASE .....	L-6
4.1. Beginning and Termination; Survival .....	L-6
4.2. Rights and Obligations of Lessee Subject to CSA .....	L-6
SECTION 5. IDENTIFICATION MARKS .....	L-6
5.1. Identifying Numbers; Legend; Changes .....	L-6
5.2. Insignia of Lessee .....	L-7
SECTION 6. TAXES .....	L-7
6.1. Indemnification for Nonincome Taxes .....	L-7
6.2. Claims; Contests; Refunds .....	L-9
6.3. Reports or Returns .....	L-9
6.4. Survival .....	L-10

---

\* This Table of Contents has been included in this document for convenience only and does not form a part of, or affect any construction or interpretation of, this document.

SECTION 7. PAYMENT FOR CASUALTY OCCURRENCES;	
INSURANCE .....	L-10
7.1. Definitions of Casualty Occurrence;	
Payments .....	L-10
7.2. Requisition by United States Government .....	L-11
7.3. Lessee Agent for Disposal .....	L-12
7.4. Payments After Expiration of Lease .....	L-12
7.5. Amount of Casualty Value .....	L-12
7.6. No Release .....	L-12
7.7. Insurance To Be Maintained .....	L-13
7.8. Insurance Proceeds and Condemnation	
Payments .....	L-14
SECTION 8. REPORTS .....	L-14
SECTION 9. DISCLAIMER OF WARRANTIES .....	L-15
SECTION 10. LAWS AND RULES .....	L-16
10.1. Compliance .....	L-16
10.2. Reports by Lessor .....	L-16
SECTION 11. MAINTENANCE .....	L-16
11.1. Units in Good Operating Order .....	L-16
11.2. Additions and Accessions .....	L-17
SECTION 12. INDEMNIFICATION .....	L-17
12.1. Indemnified Persons .....	L-17
12.2. Indemnification of Builder .....	L-19
12.3. Survival .....	L-20
SECTION 13. DEFAULT .....	L-20
13.1. Events of Default; Remedies .....	L-20
13.2. Remedies Not Exclusive; Waiver .....	L-23
13.3. Failure To Exercise Rights Is Not Waiver .....	L-23
13.4. Notice of Event of Default .....	L-24
SECTION 14. RETURN OF UNITS UPON DEFAULT .....	L-24
14.1. Return of Units .....	L-24
14.2. Lessor Appointed Agent of Lessee .....	L-25
SECTION 15. ASSIGNMENT, POSSESSION AND USE .....	L-25
15.1. Assignment; Consent .....	L-25
15.2. Lessee's Rights To Use the Units, To Permit	
Use Thereof by Others and To Sublease	
the Units .....	L-26
15.3. Transfers by Lessee Through Merger,	
Acquisition or Consolidation .....	L-27

SECTION 16. PURCHASE OPTION .....	L-28
16.1. Purchase Option .....	L-28
16.2. Determination of Fair Market Value .....	L-28
SECTION 17. RETURN OF UNITS UPON EXPIRATION OF TERM .....	L-29
SECTION 18. RECORDING .....	L-30
SECTION 19. INTEREST ON OVERDUE RENTALS .....	L-30
SECTION 20. LESSOR'S RIGHT TO PERFORM FOR THE LESSEE ..	L-31
SECTION 21. NOTICES .....	L-31
SECTION 22. SEVERABILITY .....	L-31
SECTION 23. EFFECT AND MODIFICATION OF LEASE .....	L-32
SECTION 24. THIRD PARTY BENEFICIARIES .....	L-32
SECTION 25. EXECUTION .....	L-32
SECTION 26. LAW GOVERNING .....	L-32
SECTION 27. NO RECOURSE .....	L-33
SECTION 28. AGREEMENTS FOR BENEFIT OF OWNER AND OWNER'S AND LESSOR'S ASSIGNS .....	L-33
SECTION 29. TERM LESSOR AND LESSEE .....	L-33
SECTION 30. FINANCE LEASE ELECTION .....	L-34
TESTIMONIUM .....	L-34
SIGNATURES .....	L-34
ACKNOWLEDGMENTS .....	L-36
APPENDIX A Units Leased .....	L-37
APPENDIX B Rental Rates .....	L-38
APPENDIX C Schedule of Casualty Values .....	L-40

LEASE OF RAILROAD EQUIPMENT dated as of March 15, 1984, between MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, a Delaware corporation ("Lessee"), and THE CONNECTICUT BANK AND TRUST COMPANY, NATIONAL ASSOCIATION, not in its individual capacity but solely as Trustee ("Lessor") under a Trust Agreement dated as of the date hereof ("Trust Agreement") with MERCANTILE TRUST COMPANY N.A. ("Owner").

WHEREAS the Lessor is entering into a Conditional Sale Agreement dated as of the date hereof ("CSA") with General Motors Corporation (Electro-Motive Division) ("Builder") by which the Builder has agreed to manufacture, sell and deliver to the Lessor the units of railroad equipment described in Appendix A hereto;

WHEREAS the Builder is assigning its interests in the CSA pursuant to an Agreement and Assignment dated the date hereof ("CSA Assignment") to Mercantile-Safe Deposit and Trust Company, acting as agent for a certain investor under a Participation Agreement dated as of the date hereof ("Participation Agreement") among said agent, the Lessee, the Lessor, the Owner and the investor named in Appendix I thereto (together with its successors and assigns "Investors") (said agent as so acting, together with its successors and assigns, called "Vendor");

WHEREAS the Lessee desires to lease such number of units of the railroad equipment as are delivered and accepted and settled for under the CSA ("Units") at the rentals and for the terms and upon the conditions hereinafter provided;

WHEREAS the Lessor will assign certain of its rights under this Lease for security to the Vendor pursuant to an Assignment of Lease and Agreement ("Lease Assignment") dated as of the date hereof and the Lessee will acknowledge and consent thereto pursuant to the Consent and Agreement ("Consent") in the form attached to the Lease Assignment; and

WHEREAS the Lessee will agree to indemnify the Owner pursuant to an Indemnity Agreement dated as of the date hereof ("Indemnity Agreement") between the Lessee and the Owner, against certain losses, liabilities or expenses incurred or suffered by the Owner;



NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions:

#### SECTION 1. NET LEASE

This Lease is a net lease. The Lessee's obligation to pay all rentals and other amounts hereunder shall be absolute and unconditional and, except as herein specifically provided, the Lessee shall not be entitled to any abatement of rent, reduction thereof, recoupment or setoff against rent or such other amounts, including, but not limited to, abatements, reductions, recoupments or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor or the Owner under this Lease or the CSA including the Lessee's rights by subrogation thereunder to the Builder or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or any bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final, and the Lessee shall not seek to recover all

or any part of such payment from the Lessor, the Owner or the Vendor for any reason whatsoever.

## SECTION 2. DELIVERY AND ACCEPTANCE OF UNITS

The Lessor hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the CSA. Each delivery of a Unit to the Lessor under the CSA shall be deemed to be a delivery hereunder to the Lessee at the point or points within the United States of America at which such Unit is so delivered to the Lessor. Upon such delivery, the Lessee will cause an employee of the Lessee to inspect the same and, if such Unit is found to be acceptable, to accept delivery of such Unit on behalf of the Lessor under the CSA and on behalf of itself hereunder and execute and deliver to the Lessor a certificate of acceptance ("Certificate of Acceptance") in accordance with the provisions of Article 3 of the CSA, stating that such Unit has been inspected and accepted on behalf of the Lessee and the Lessor on the date of such Certificate of Acceptance and is marked in accordance with § 5.1 hereof, whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease.

## SECTION 3. RENTALS

3.1. Amount and Date of Payment. (1) The Lessee agrees to pay the Lessor, as rental for each Unit subject to this Lease, (i) one interim rental payable on June 15, 1984, and (ii) 60 consecutive quarterly payments, payable in arrears, on March 15, June 15, September 15 and December 15 in each year commencing September 15, 1984, to and including June 15, 1999. The interim rental for each Unit shall be in an amount equal to 0.0301% of the Purchase Price (as defined in paragraph 4.1 of the CSA) for such Unit for each day elapsed from the Closing Date for such Unit to June 15, 1984. The 60 quarterly rental payments shall each be in an amount equal to the basic lease rate set forth in Appendix B hereto for the applicable payment date multiplied by the Purchase Price of each Unit subject to this Lease. In addition, the Lessee agrees to pay the Lessor as additional rentals for each Unit subject to this Lease (i) on the Repayment Date (as defined in the first paragraph of Paragraph 9 of the Participation Agreement) an amount equal to the interest payable under clause (a) of the second paragraph of said Paragraph 9, (ii) on June 15, 1984, an amount equal to interest accrued on the amount deposited by

the Investor from the Deposit Date to the various Closing Dates and (iii) from time to time upon demand of the Lessor an amount equal to any Investment Deficiency (as defined in the third paragraph of Paragraph 2 of the Participation Agreement).

(2) The basic lease rates set forth in Appendix B hereto have been calculated on the assumption that the Units will have been settled for on the date and in the amount as follows:

<u>Assumed Settlement Date</u>	<u>Assumed Settlement Amount</u>
April 30, 1984	\$6,578,400

If for any reason any Units are settled for other than on the Assumed Settlement Date or other than in the Assumed Settlement Amount, then such basic lease rates (and the related Casualty Values set forth in Appendix C hereto) payable by the Lessee hereunder in respect of the Units from and after September 15, 1984, shall be increased or decreased, as the case may be, by such amount as shall, in the reasonable opinion of the Owner, cause the Owner's after-tax economic yields and cash flows (computed on the same assumptions, including tax rate, as were utilized by the Owner in originally evaluating this transaction, such yields and cash flows being hereinafter called "Net Economic Return") to equal the Net Economic Return that would have been realized by the Owner if all Units had been settled for on the Assumed Settlement Date in the Assumed Settlement Amount. The Lessor shall provide a schedule of such rentals and Casualty Values to the Lessee and the Vendor promptly after the facts have been determined and the calculations have been made by the Owner.

(3) In the event that any dispute should arise as to the calculation of such rentals under § 3.1(2) (or the related Casualty Values), the Lessee agrees, pending resolution of such dispute, to pay on account of such rentals (or such Casualty Values), on the dates due hereunder, amounts at least equal to the principal and/or interest payable on each such date under paragraphs 4.3(b), 4.4 and 7.2 of the CSA, but no such payment shall, as between the Lessor and the Lessee, prejudice the right of the Lessor to receive from the Lessee any amount in addition thereto, due and payable hereunder.

(4) Anything in the foregoing provisions of this § 3.1 to the contrary notwithstanding, it is agreed that the

aggregate of the rentals payable pursuant to this § 3.1 on each rental payment date shall in no event be less than the principal and interest payment due on each such date pursuant to paragraphs 4.3(b) and 4.4 of the CSA.

3.2. Payments on Nonbusiness Days. If any of the rental payment dates referred to in § 3.1 is not a business day the rental payment otherwise payable on such date shall be payable on the next business day, and no interest shall be payable thereon for the period from and after the scheduled date for payment thereof to such next business day. The term "business day" as used herein means a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York, Hartford, Connecticut, Baltimore, Maryland, or Dallas, Texas, are authorized or obligated to remain closed.

3.3. Instructions To Pay Vendor and Lessor. If the Lease Assignment is executed and delivered, until the Vendor shall have advised the Lessee in writing that all sums due from the Lessor under the CSA have been fully satisfied and discharged, the Lessor irrevocably instructs the Lessee to make all Payments (as defined in the Lease Assignment) to the Vendor, for the account of the Lessor, in care of the Vendor, with instructions to the Vendor (a) first to apply such payments to satisfy the obligations of the Lessor under the CSA known to the Vendor to be due and payable on the date such payments are due and payable hereunder and (b) second, so long as no event of default under the CSA shall have occurred and be continuing, to pay any balance promptly to the Lessor or to the order of the Lessor in immediately available funds at such place as the Lessor shall specify in writing. If the Lease Assignment is not executed and delivered, or if the Lessee shall have been advised by the Vendor in writing that all sums due from the Lessor under the CSA have been fully discharged and satisfied, the installments of rental due hereunder and any Casualty Payments thereafter due pursuant to § 7 hereof shall be made to the Lessor in immediately available funds in the manner provided in § 3.4 hereof.

3.4. Payment in Immediately Available Funds. The Lessee agrees to make each payment provided for herein as contemplated by § 3.1 in immediately available funds at or prior to 11:00 a.m. in the city where such payment is to be made.

#### SECTION 4. TERM OF LEASE

4.1. Beginning and Termination; Survival. The term of this Lease as to each Unit shall begin on the date of delivery of such Unit under the CSA and, subject to the provisions of §§ 7, 13 and 16 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to § 3.1 hereof. The obligations of the Lessee hereunder (including, but not limited to, the obligations under §§ 6, 7, 10, 11, 12, 14, 17 and 19 hereof) shall survive the expiration of the term of this Lease.

4.2. Rights and Obligations of Lessee Subject to CSA. Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessee under this Lease and in and to the Units are subject to the rights of the Vendor under the CSA. If an event of default should occur under the CSA, the Vendor may terminate this Lease without affecting the indemnities which by the provisions of this Lease survive the termination of its term (or rescind its termination), all as provided therein; provided, however, that so long as (i) no Event of Default exists hereunder, (ii) the Lessee is complying with the provisions of the Consent and (iii) the Vendor is entitled to apply the Payments as defined in the Lease Assignment in accordance with the Lease Assignment, this Lease may not be terminated and the Lessee shall be entitled to the rights of possession, use and assignment provided under § 15 hereof.

#### SECTION 5. IDENTIFICATION MARKS

5.1. Identifying Numbers; Legend; Changes. The Lessee will cause each Unit to be kept numbered with the road number set forth in Appendix A hereto, or in the case of any Unit not there listed such road number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION", or other appropriate words designated by the Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's and Vendor's title to and property in such Unit and the rights of the Lessor under this Lease and of the rights of the Vendor under the CSA. The Lessee will not place any such Unit in operation or exercise any control or dominion over

the same until such words shall have been so marked on both sides thereof and will replace promptly any such words which may be removed, obliterated, defaced or destroyed. The Lessee will not change the road number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Vendor and the Lessor and filed, recorded and deposited by the Lessee in all public offices where this Lease and the CSA shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished the Vendor and the Lessor an opinion of counsel to the effect that such statement has been so filed, recorded and deposited, such filing, recording and deposit will protect the Vendor's and the Lessor's interests in such Units and no filing, recording, deposit or giving of notice with or to any other Federal, state or local government or agency thereof is necessary to protect the interests of the Vendor and the Lessor in such Units.

5.2. Insignia of Lessee. The Units may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates, but the Lessee will not allow the name of any other person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership.

## SECTION 6. TAXES

6.1. Indemnification for Nonincome Taxes. Whether or not any of the transactions contemplated hereby are consummated, the Lessee agrees to pay, and to indemnify and hold the Lessor (both in its individual and fiduciary capacities), the Owner, the Vendor and each Investor harmless from, all taxes, assessments, fees and charges of any nature whatsoever, together with any penalties, fines, additions to tax or interest thereon, howsoever imposed, whether levied or imposed upon the Lessor, the Vendor, the Lessee, the trust estate created by the Trust Agreement or otherwise, by any Federal, state or local government or governmental subdivision in the United States or by any foreign country or subdivision thereof, upon or with respect to, any Unit or any part thereof; the purchase, ownership, delivery, leasing, possession, use, operation, transfer of title, return or other disposition thereof; the indebtedness with respect thereto; the rentals, receipts or earnings arising therefrom; or this Lease, the Trust Agreement, the Participation Agreement, the CSA, the CSA Assignment, the Lease Assignment, any payment made pursuant to any such

agreement, or the property, the income or other proceeds received with respect to property held in trust by the Lessor under the Trust Agreement (all such taxes, assessments, fees, charges, penalties, fines, additions to tax and interest imposed as aforesaid being hereinafter called "Taxes"); excluding, however: (i) Taxes of the United States or of any state or political subdivision thereof and (if and to the extent that any person indemnified hereunder is entitled to a credit therefor against its United States Federal income taxes or is indemnified by the Lessee pursuant to the Indemnity Agreement) of any foreign country or subdivision thereof, imposed on or measured solely by the net income or excess profits of the Lessor (in its individual capacity), the Owner or the Vendor, or franchise taxes to the extent measured by gross receipts or net income based on gross receipts of the Lessor or the Vendor, or gross receipts taxes other than gross receipts taxes in the nature of sales or use taxes, and other than Taxes arising out of or imposed in respect of the receipt of indemnification payments pursuant to this Lease; provided that Taxes of any foreign country or subdivision thereof incurred as a result of the indemnified party being taxed by such foreign country or subdivision on its world-wide income without regard to the transactions contemplated by this Lease shall be excluded in all cases, whether or not the indemnified party is entitled to a credit against its United States Federal income taxes; (ii) any Taxes imposed as a direct result of a voluntary transfer or other voluntary disposition by the Owner unless such transfer or disposition is the direct result of a breach by the Lessee of any of its obligations under this Lease, the Indemnity Agreement, the Participation Agreement and the Lease Assignment and Consent, or any transfer or disposition by the Owner resulting from bankruptcy or other proceedings for the relief of debtors in which the Owner is the debtor, whether voluntary or involuntary, of any interest in any Unit or interest in rentals under this Lease; (iii) any Taxes imposed on or measured by any fees or compensation received by the Lessor, the Owner or the Vendor; and (iv) Taxes which are imposed on or measured solely by the net income of the Lessor, the Owner or the Vendor if and to the extent that such Taxes are in substitution for or reduce the Taxes payable by any other person which the Lessee has not agreed to pay or indemnify against pursuant to this § 6.1; provided, however, that the Lessee shall not be required to pay any Taxes during the period it may be contesting the same in the manner provided in § 6.2 hereof. The Lessee further agrees to pay on or before the time or times prescribed by law any tax imposed on or measured solely by the net income of the Lessee under the laws of the United States or of any state or political subdivision thereof, or of any foreign country or subdivi-

sion thereof which, if unpaid, might result in a lien or other encumbrance upon any Unit; provided, however, that the Lessee shall not be required to pay any such tax during the period it may be contesting the same in good faith by appropriate proceedings if in the opinion of the Lessor or the Vendor such contest or the nonpayment of such tax would not adversely affect the title, property or rights of the Lessor hereunder or of the Vendor under the CSA.

6.2. Claims; Contests; Refunds. If claim is made against the Lessor or the Vendor for any Taxes indemnified against under this § 6, such party shall promptly notify the Lessee. If reasonably requested by the Lessee in writing, the Lessor or the Vendor, as the case may be, shall, upon receipt of any indemnity satisfactory to it for all its reasonable charges for its services rendered in connection therewith and for all costs, expenses, losses, legal and accountants' fees and disbursements, penalties, fines, additions to tax and interest, and at the expense of the Lessee, contest in good faith the validity, applicability or amount of such Taxes by (a) resisting payment thereof if possible, (b) not paying the same except under protest, if protest is necessary and proper, or (c) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative or judicial proceedings, or both. The Lessee may also contest, at its own expense, the validity, applicability or amount of such Taxes in the name of the Lessor or the Vendor; provided that no proceeding or actions relating to such contest shall be commenced (nor shall any pleading, motion, brief or other paper be submitted or filed in the name of the Lessor or the Vendor in any such proceeding or action) if in the opinion of the Lessor or the Vendor such contest or the nonpayment of the Taxes would adversely affect the title, property or rights of the Lessor hereunder or of the Vendor under the CSA. The Lessee agrees to give the Lessor and the Vendor reasonable notice of such contest prior to the commencement thereof. If the Lessor or the Vendor shall obtain a refund of all or any part of such Taxes previously reimbursed by the Lessee in connection with any such contest or an amount representing interest thereon, the Lessor or the Vendor, as the case may be, shall pay the Lessee the amount of such refund or interest net of reasonable contest expenses incurred, and such amount shall not exceed the amount previously paid or reimbursed by the Lessee, expenses; provided, however, that no Event of Default and no event which with notice or lapse of time or both would constitute an Event of Default shall have occurred and be continuing.

6.3. Reports or Returns. In case any report or return is required to be made with respect to any obligation



of the Lessee under or arising out of this § 6 (except obligations resulting from the last sentence of § 6.1), the Lessee will, where permitted to do so under applicable rules and regulations, make and timely file such reports and returns in such manner as to show the interest of the Lessor and the Vendor in the Units as shall be satisfactory to the Lessor and the Vendor or, where not so permitted, will notify the Lessor, the Vendor and the Owner of such requirement and will prepare and deliver such reports to the Lessor and the Vendor within a reasonable time prior to the time such reports are to be filed. All costs and expenses (including legal and accountants' fees) of preparing any such return or report shall be borne by the Lessee.

6.4. Survival. All the obligations of the Lessee under this § 6 shall survive and continue, but only with respect to periods included in the term of this Lease, notwithstanding payment in full of all amounts due under the CSA or the termination of this Lease. Payments due from the Lessee to the Lessor or the Vendor under this § 6 shall be made directly to the party indemnified.

6.5. Gross Up. The amounts payable by the Lessee under § 6.1 to the Owner or the Investor shall be adjusted to account for all taxes required to be paid by the Owner or Investor in respect of the receipt of such amounts and for any deductions or credits to which the Owner or Investor are entitled in respect of the payment of such Taxes under the laws of any Federal, state or local government or taxing authority of the United States. For purposes of this adjustment, it shall be assumed that the highest normal corporate income tax rate under the Internal Revenue Code of 1954, as amended and in effect from time to time (currently 46%) applied to all the ordinary income of the Owner and the Investor.

## SECTION 7. PAYMENT FOR CASUALTY OCCURRENCES; INSURANCE

7.1. Definitions of Casualty Occurrence; Payments. In the event that any Unit of Equipment shall be or become worn out, lost, stolen, destroyed, or, in the opinion of the Lessee, irreparably damaged, from any cause whatsoever during the term of this Lease or any renewal term hereof or until such Unit is returned pursuant to § 14 or § 17 hereof, or the Purchase Price of any Unit shall have been refunded by the Builder of such Unit pursuant to the terms of its patent indemnity therefor or any Unit shall be taken or requisitioned by condemnation or otherwise by the United States Government for a stated period which shall exceed the then remaining term of this Lease or by any other

governmental entity resulting in loss of possession by the Lessee for a period of 90 consecutive days during the term of this Lease or during any renewal term hereof ("Casualty Occurrence"), the Lessee shall promptly and fully notify the Lessor and the Vendor with respect thereto. On the next succeeding rental payment date occurring at least 10 days after such notice from the Lessee has been received (each such date being hereinafter called a "Casualty Payment Date"), the Lessee shall pay to the Lessor a sum equal to the Casualty Value (as hereinafter defined) of any such Unit as of such Casualty Payment Date plus the rental for such Unit payable on the Casualty Payment Date; provided, however, that in the event of a Casualty Occurrence during the period any Unit is required to be returned pursuant to § 14 or § 17 hereof and the 10 days prior thereto, the Lessee shall make such payment of the Casualty Value, and any earnings or rentals accrued pursuant to § 14 or § 17 hereof, to the Lessor on a date 30 days after such Casualty Occurrence. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft, complete destruction or return to the Builder of such Unit) the Lessor shall be entitled to recover possession of such Unit; but the Lessee as agent for the Lessor may sell such Unit for its salvage value, at a price acceptable to the Lessor, and the Lessee may retain from the proceeds of such sale any amount up to the Casualty Value paid in respect thereof and any excess shall be paid to the Lessor.

In addition to the occurrences constituting a Casualty Occurrence under the preceding paragraph, if any Unit shall have been taken or requisitioned by the United States Government or any other governmental entity and such taking or requisition shall not theretofore constitute a Casualty Occurrence as aforesaid, such taking or requisition shall be deemed a Casualty Occurrence if the same shall be continuing at the end of the original or any renewal term of this Lease; in which event the Lessee shall promptly and fully notify the Lessor with respect thereto and pay the Lessor an amount equal to the Casualty Value of such Unit as of the end of such term. Following such payment, the Lessee shall be entitled to receive condemnation payments in respect of such Unit up to an amount equal to such Casualty Value and any balance of such payments shall be the property of the Lessor. In the event such Unit shall be returned by the governmental entity prior to the time the Lessee shall have been reimbursed by such application of condemnation payments in an amount equal to such Casualty Value, then the

Lessee shall dispose of such Unit as agent for the Lessor and shall retain the proceeds of such disposition to the extent that the aggregate of the amounts so retained and the condemnation payments theretofore received by the Lessee shall equal such Casualty Value, and the balance of such proceeds shall be promptly paid to the Lessor. In the event such Unit shall be returned by the governmental entity following the time the Lessee shall have been reimbursed by such application of condemnation payments in an amount equal to such Casualty Value, such Unit shall be returned by the Lessee to the Lessor in the manner provided in § 17 hereof.

7.2. Requisition by United States Government. In the event of the requisition for use by the United States Government of any Unit for a period which does not exceed the then remaining term of this Lease (except where deemed a Casualty Occurrence pursuant to the last paragraph of § 7.1 hereof), all of the Lessee's obligations under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred. All payments received by the Lessor or the Lessee from the United States Government for the use of such Unit during the term of this Lease shall be paid over to, or retained by, the Lessee; provided that no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing.

7.3. Lessee Agent for Disposal. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof before and after expiration of this Lease, at the best price obtainable under the circumstances on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Lessor (i) the Lessee shall be entitled to the net proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor and (ii) the Lessee shall be entitled to credit against the Casualty Value payable in respect of any Unit returned to a Builder pursuant to the patent indemnity provisions of the CSA an amount equal to any payment made by such Builder to the Lessor in respect thereof under the CSA.

7.4. Payments After Expiration of Lease. If the date upon which the making of the payment by the Lessee in § 7.1 hereof in respect of any Unit is required as aforesaid shall be after the term of this Lease or any renewal term thereof in respect of such Unit has expired, no rental for such Unit shall accrue after the end of such term.

7.5. Amount of Casualty Value. The Casualty Value of each Unit as of the Casualty Payment Date on which payment is made shall be an amount equal to that percentage of the Purchase Price of such Unit as is set forth in Appendix C hereto opposite the Casualty Payment Date next succeeding the actual date of such Casualty Occurrence or, if there is no such Casualty Payment Date, the last rental payment date; but in no event shall such amount be less than the "Casualty Value" (as defined in Section 7.4 of the CSA) as of such Casualty Payment Date.

7.6. No Release. Except as hereinabove in this § 7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessee hereunder.

7.7. Insurance To Be Maintained. (1) The Lessee will, at all times prior to the return of the Units to the Lessor, at its own expense, cause to be carried and maintained (i) property insurance in respect of the Units at the time subject hereto; provided, however, that the Lessee may self-insure such Units to the extent it self-insures equipment similar to the Units and to the extent such self-insurance is consistent with prudent industry practice, and (ii) public liability insurance with respect to third-party personal and property damage, and the Lessee will continue to carry such insurance in such amounts and for such risks and with such insurance companies as is consistent with prudent industry practice but in any event at least, not less comprehensive in amounts and against risks customarily insured against by the Lessee in respect of equipment owned or leased by it similar in nature to the Units, provided further, such policies as required by (i) and (ii) above shall in no event have a deductible in excess of \$2,000,000 irrespective of industry practices. The proceeds of any property insurance shall be payable to the Vendor, the Lessor and the Lessee, as their interests may appear, so long as the indebtedness, if any, evidenced by the CSA shall not have been paid in full, and thereafter to the Lessor and the Lessee as their interests may appear. Any policies of insurance carried in accordance with this paragraph shall name the Lessor, the Owner and the Vendor as additional named insureds and loss payees as their respective interests may appear and in the event such policies shall contain breach of warranty provisions such policies shall provide that in respect of the interests of the Lessor, the Owner and the Vendor in such policies the insurance shall not be invalidated by any action or inaction

of the Lessee or any other person (other than the Lessor and the Vendor, respectively) and shall insure the Lessor, the Owner and the Vendor regardless of any breach or violation of any warranty, declaration or condition contained in such policies by the Lessee or by any other person (other than the Lessor or the Vendor, respectively). Prior to the first date of delivery of any Unit pursuant to the CSA, and thereafter on or before the expiration dates of the expiring policies required hereunder, the Lessee shall deliver to the Lessor and the Vendor certificates of insurance showing compliance with the provisions hereof. Each such certificate shall provide that the issuer thereof shall give 30 days' prior notice to the Lessor, the Owner and the Vendor in the event of cancellation or material change in coverage as to any policy identified in the certificate.

(2) In the event that the Lessee shall fail to maintain insurance as herein provided, the Lessor may at its option provide such insurance (giving the Lessee prompt written notice thereof) and, in such event, the Lessee shall, upon demand from time to time, reimburse the Lessor for the cost thereof together with interest, on the amount of the cost to the Lessor of such insurance which the Lessee shall have failed to maintain, at the rate per annum specified in § 19 hereof.

7.8. Insurance Proceeds and Condemnation Payments. If the Lessor shall receive (directly or from the Vendor) any insurance proceeds or condemnation payments in respect of such Units suffering a Casualty Occurrence, the Lessor shall pay such proceeds or condemnation payments to the Lessee up to an amount equal to the Casualty Value with respect to a Unit paid by the Lessee and any balance of such proceeds or condemnation payments shall remain the property of the Lessor; provided, however, that no Event of Default shall have occurred and be continuing and the Lessee shall have made payment of the Casualty Value thereof, and accrued rentals in respect of such Units, to the Lessor. All insurance proceeds received by the Lessor (directly or from the Vendor) in respect of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired.

## SECTION 8. REPORTS

On or before May 31 in each year, commencing with the calendar year 1985, the Lessee will furnish to the

Lessor and the Vendor an accurate statement (a) setting forth as at the preceding December 31 the total number, description and road numbers of all Units then leased hereunder and covered by the CSA, the total number, description and road numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year or are then undergoing repairs (other than running repairs) or then withdrawn from use pending repair (other than running repairs) and setting forth such other information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by 5.1 hereof have been preserved or replaced. The Lessor, the Vendor and the Owner shall each have the right (but not any obligation) by its agents to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor, the Vendor or the Owner may request during the continuance of this Lease.

#### SECTION 9. DISCLAIMER OF WARRANTIES

THE LESSOR DOES NOT MAKE, HAS NOT MADE AND SHALL NOT BE DEEMED TO MAKE OR HAVE MADE ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR DOES NOT MAKE ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE NOR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, NOR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims the Lessor may have against the Builder under the provisions of Items 3 and 4 of Annex A of the CSA; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused

directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor or the Vendor based on any of the foregoing matters.

#### SECTION 10. LAWS AND RULES

10.1. Compliance. The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units or are necessary to comply with health, safety or environmental standards as more fully described in Section 4(4) of Internal Revenue Service Rev. Proc. 75-21 as modified by Rev. Proc. 79-48, and in the event that such laws or rules require any alteration, replacement or addition of or to any part of any Unit, the Lessee will conform therewith at its own expense; provided, however, that the Lessee may at its own expense, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor or the Vendor, adversely affect the property or rights of the Lessor or the Vendor under this Lease or under the CSA.

10.2. Reports by Lessor. The Lessee will prepare and deliver to the Lessor and the Vendor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor and the Vendor) any and all reports (other than income tax returns) to be filed by the Lessor with any Federal, state or other

regulatory authority by reason of the ownership by the Lessor or the Vendor of the Units or the leasing thereof to the Lessee.

## SECTION 11. MAINTENANCE

11.1. Units in Good Operating Order. The Lessee, at its own cost and expense, will maintain and keep each Unit (including any parts installed on or replacements made to any Unit and considered an accession thereto as hereinbelow provided) which is subject to this Lease in good operating order, repair and condition, ordinary wear and tear excepted.

11.2. Additions and Accessions. (1) Except as set forth in §10.1 and 11.1 hereof, the Lessee, at its own cost and expense, may from time to time make such other additions, modifications and improvements to the Units during the term of this Lease as are readily removable without causing material damage to the Units and do not adversely and materially affect the value of the Units. The additions, modifications and improvements made by the Lessee under the preceding sentence shall be owned by the Lessee if removed from the Units prior to the time such Units are returned as provided in §§ 14 and 17, except to the extent such additions, modifications or improvements are made in order to comply with 11.2(2) hereof.

(2) Any and all parts installed on and additions and replacements made to any Unit (i) which are not readily removable without causing material damage to such Unit and were installed or were added to such Unit in contravention of its agreements contained in § 11.2(1) hereof, or (ii) the cost of which is included in the Purchase Price of such Unit, or (iii) in the course of ordinary maintenance of the Units or (iv) which are required for the operation or use of such Unit by the interchange rules of the Association of American Railroads or by the regulations of the Department of Transportation, the Interstate Commerce Commission or any other applicable regulatory body, shall constitute accessions to such Unit and full ownership thereof free from any lien, charge, security interest or encumbrance (except for those created by the CSA and the CSA Assignment) shall immediately be vested in the Lessor.

(3) In no event shall the cost to the Lessee of any additions, modifications or improvements described in this § 11.2 be considered rent received by the Lessor.



## SECTION 12. INDEMNIFICATION

12.1. Indemnified Persons. The Lessee shall pay, and shall protect, indemnify and hold the Lessor (in both its individual and fiduciary capacities), the Owner, the Vendor, each Investor and their respective successors, assigns, agents and servants ("Indemnified Persons"), harmless from and against any and all causes of action, suits, penalties, claims, demands or judgments, of any nature whatsoever which may be imposed on, incurred by or asserted against any Indemnified Person (including any or all liabilities, obligations, damages, costs, disbursements, expenses [including without limitation attorneys' fees and expenses of any Indemnified Person] relating thereto) in any way relating to or arising, or alleged to arise, out of this Lease, the CSA or the Units, including, without limitation, those in any way relating to or arising or alleged to arise out of (i) the manufacture, construction, purchase, acceptance, rejection, ownership, delivery, nondelivery, lease, possession, use, operation, condition, sale, return or other disposition of any Unit or portion thereof, (ii) any latent and other defects whether or not discoverable by the Lessor, the Owner, the Vendor or the Lessee, (iii) any claim for patent, trademark or copyright infringement, (iv) any claims based on strict liability in tort, (v) any injury to or the death of any person or any damage to or loss of property on or near the Units or in any manner growing out of or concerned with, or alleged to grow out of or be connected with, the ownership, use, replacement, adaptation or maintenance of the Units or of any other equipment in connection with the Units (whether owned or under the control of the Lessor, the Lessee or any other person) or resulting or alleged to result from the condition of any thereof, except as provided by the second sentence of § 17 of this Lease, (vi) any violation of any provision of this Lease (except by the Lessor) or of any agreement, law, rule, regulation, ordinance or restriction affecting or applicable to the Units or the leasing, ownership, use, replacement, adaptation or maintenance thereof, or (vii) any claim arising out of any of the Lessor's obligations under the Lease Assignment or the Vendor's retention of a security interest under the CSA or the Lease Assignment or the Participation Agreement, except to the extent such claim arises from an act or omission of the party claiming indemnification (all of which matters hereinabove set forth in this paragraph being hereinafter called "Indemnified Matters"). The indemnities provided in this § 12.1 do not extend to such liabilities, losses, damages, injuries, penalties, claims, demands, actions, suits, costs, and

expenses as may arise due to the willful misconduct or gross negligence of the party seeking indemnity. The willful misconduct or negligence of any party indemnified hereunder shall not affect the rights of any other party entitled to indemnity. The Lessee shall be obligated under this § 12.1, irrespective of whether any Indemnified Person shall also be indemnified with respect to the same Indemnified Matter under any other agreement by any other person, and the Indemnified Person seeking to enforce the indemnification may proceed directly against the Lessee under this § 12.1 without first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against any Indemnified Person in connection with any Indemnified Matter, the Lessee may and, upon such Indemnified Person's request, will at the Lessee's expense resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by the Lessee and approved by such Indemnified Person and, in the event of any failure by the Lessee to do so, the Lessee shall pay all costs and expenses (including without limitation attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. In the event the Lessee is required to make any payment under this § 12, the Lessee shall pay such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person in respect of the receipt thereof under the laws of the United States or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against, and of any other such taxes as determined in the sole discretion of the Indemnified Person), shall be equal to the amount of such payment. The Lessee and the Lessor each agree to give each other promptly upon obtaining knowledge thereof written notice of any claim or liability hereby indemnified against. Upon the payment in full of any indemnities as contained in this § 12 by the Lessee, and provided that no Event of Default (or other event which with lapse of time or notice or both would constitute an Event of Default) shall have occurred and be continuing, the Lessee shall be subrogated to any right of such Indemnified Person (except against another Indemnified Person) in respect of the Indemnified Matter against which indemnity has been given. Any payments received by such Indemnified Person from any person (except the Lessee) as a result of any Indemnified Matter with respect to which such Indemnified Person has been indemnified by the Lessee pursuant to this § 12.1 shall be paid over to the Lessee to the extent necessary to reimburse the Lessee for indemnification payments previously made to such

Indemnified Person. Nothing in this § 12.1 shall constitute a guarantee by the Lessee of the CSA Indebtedness of the Lessor under the CSA or a guarantee of the residual value of any Unit or indemnification for the tax liability of any Indemnified Person.

12.2. Indemnification of Builder. The Lessee further agrees to indemnify, protect and hold harmless the Builder as a third-party beneficiary hereof from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Builder because of the use in or about the construction or operation of any of the Equipment of any article or material specified by the Lessee and not manufactured by the Builder or of any design, system, process, formula or combination specified by the Lessee and not developed or purported to be developed by the Builder which infringes or is claimed to infringe on any patent or other right. The Lessee will give notice to the Builder of any claim known to the Lessee from which liability may be charged against the Builder hereunder.

12.3. Survival. The indemnities contained in this § 12 shall survive the expiration or termination of this Lease with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of, and shall be enforceable by, any Indemnified Person. None of the indemnities in this § 12 shall be deemed to create any rights of subrogation in any insurer or third party against the Lessee therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

## SECTION 13. DEFAULT

13.1. Events of Default; Remedies. If, during the continuance of this Lease or any extension or renewal thereof, one or more of the following events (each such event being herein sometimes called an "Event of Default") shall occur:

(A) default shall be made in payment of any amount provided for in §§ 3, 7 or 16 hereof, and such default shall continue for 5 business days;

(B) the Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or any.

interest herein, or the right to possession of the Units, or any thereof;

(C) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Participation Agreement or the Indemnity Agreement and such default shall continue for 30 days after written notice from the Lessor or the Vendor to the Lessee specifying the default and demanding that the same be remedied;

(D) any representation or warranty made by the Lessee herein or in the Participation Agreement or in any certificate or statement furnished to the Lessor or the Owner pursuant to or in connection with any such agreements proves untrue in any material respect as of the date of issuance or making thereof;

(E) a petition for reorganization under Title 11 of the United States Code, as now constituted or as hereafter amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceeding in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees, within 60 days after such petition shall have been filed and otherwise in accordance with the provisions of 11 U.S.C. § 1168, or any successor provision as the same may hereafter be amended; or

(F) any other proceeding shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of such obligations), and, unless such proceeding shall have been dismissed, nullified, stayed or otherwise rendered

ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee or for the property of the Lessee in connection with any such proceeding in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such a trustee or trustees or receiver or receivers, within 60 days after such proceeding shall have been commenced;

then, in any such case, the Lessor, at its option, may:

(a) proceed by appropriate court action, either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises, insofar as the Lessee may be lawfully authorized so to permit, where any of the Units may be located, without judicial process if this can be done without breach of the peace and in accordance with due process of law, and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and

also to recover forthwith from the Lessee as damages for loss of the bargain and not as a penalty whichever of the following amounts that the Lessor, in its sole discretion, shall specify:

(i) a sum, with respect to each Unit, which represents (x) the excess of the present value, at the time of such termination, of the entire unpaid balance of all rentals for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit, such present value to be computed on the basis of a 8% per annum discount, compounded quarterly from the respective dates upon which rental would have been payable hereunder had this Lease not been terminated over the then present value of the rental which the Lessor reasonably estimates to be obtainable for each Unit during such period, such present value to be computed on the basis of a 8% per annum discount, compounded quarterly from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated or, if such Unit is sold, the net proceeds of the sale plus (y) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than for the payment of rental or (ii) an amount equal to the excess, if any, of the Casualty Value as of the Casualty Payment Date on or next preceding the date of termination over the amount the Lessor reasonably estimates to be the sales value of such Unit at such time; provided, however, that in the event the Lessor shall have sold any Unit, the Lessor, in lieu of collecting any amounts payable by the Lessee pursuant to the preceding clause (ii) with respect to such Unit, may, if it shall so elect, demand that the Lessee pay the Lessor and the Lessee shall pay to the Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit, as of the Casualty Payment Date on or next preceding the date of termination over the net proceeds of such sale.

The Lessee will pay all reasonable expenses, including attorneys' fees, incurred by the Lessor in enforcing its remedies under the terms of this Lease.

13.2. Remedies Not Exclusive; Waiver. The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law. The Lessee hereby waives any and all existing or future claims to any offset and/or recoupment against the rental payments due hereunder and agrees to make such payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

13.3. Failure To Exercise Rights Is Not Waiver. The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

13.4. Notice of Event of Default. The Lessee also agrees to furnish the Lessor, the Owner and the Vendor, promptly upon any responsible officer becoming aware of any condition which constituted or constitutes an Event of Default under this Lease or which, after notice or lapse of time, or both, would constitute such an Event of Default, written notice specifying such condition and the nature and status thereof. For the purposes of this § 13.4, a "responsible officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of the Lessee in this Lease contained, any corporate officer of the Lessee who, in the normal performance of his operational responsibilities, would have knowledge of such matter and the requirements of this Lease with respect thereto.

#### SECTION 14. RETURN OF UNITS UPON DEFAULT

14.1. Return of Units. If this Lease shall terminate pursuant to § 13 hereof or pursuant to Article 16 of the CSA, the Lessee shall forthwith deliver possession of the Units to the Lessor. Each Unit so delivered shall be in the same operating order, repair and condition as when

originally delivered to the Lessee, ordinary wear and tear excepted, shall meet the standards then in effect under the Interchange Rules of the Association of American Railroads and/or the applicable rules of any governmental agency or other organization with jurisdiction and shall have attached or affixed thereto any special device considered an accession thereto as provided in § 11 and shall have removed therefrom at the Lessee's expense any addition, modification or improvement which, as provided in § 11, is owned by the Lessee. For the purpose of delivering possession of any Unit or Units as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any Unit or Units have been interchanged or which may have possession thereof to return the Unit or Units) and at the usual speed place such Units upon such storage tracks of the Lessee or any of its affiliates as the Lessor reasonably may designate;

(b) permit the Lessor to store such Units on such tracks at the risk of the Lessee without charge for insurance, rent or storage until all such Units have been sold, leased or otherwise disposed of by the Lessor; and

(c) transport the same to any place on the lines of railroad operated by the Lessee or any of its affiliates or to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store, insure and transport the Units. During any storage period, the Lessee will, at its own cost and expense, maintain and keep the Equipment insured and in good order and repair and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser or user of any such Unit, to inspect the same. All amounts earned in



respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor.

14.2. Lessor Appointed Agent of Lessee. Without in any way limiting the obligation of the Lessee under the foregoing provisions of this 14, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

#### SECTION 15. ASSIGNMENT, POSSESSION AND USE

15.1. Assignment; Consent. This Lease shall be assignable in whole or in part by the Lessor to any successor Lessor which may be appointed pursuant to Article VII of the Trust Agreement or to any banking or financial institution which has a combined capital and surplus of at least \$50,000,000 and which has no interlocking relationship with the Lessee within the meaning of Section 10 of the Clayton Act. The Lessee hereby consents to the assignment of this Lease pursuant to the Lease Assignment.

15.2. Lessee's Rights To Use the Units, To Permit Use Thereof by Others and To Sublease the Units. (1) So long as (i) no Event of Default exists hereunder, (ii) the Lessee is complying with the provisions of the Consent and (iii) the Vendor is entitled to apply the Payments as defined in the Lease Assignment in accordance with the Lease Assignment, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease and the CSA but only within the continental United States of America. Without the prior written consent of the Lessor and the Vendor, the Lessee shall not assign or transfer its leasehold interest under this Lease in any of the Units or sublease any of the Units, except as provided in paragraph (2) of this § 15.2; and the Lessee shall not, without the prior written consent of the Lessor and the Vendor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of paragraph (2) of this § 15.2. The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than

an encumbrance created by the Lessor or the Vendor or resulting from claims against the Lessor or the Vendor not related to the ownership of the Units or any encumbrance on the leasehold estate of the Lessee which is subject and subordinate to the interests of the Lessor and the Vendor) upon or with respect to any Unit, including any accession thereto, or the interest of the Lessor, the Vendor or the Lessee therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises.

(2) So long as (i) no Event of Default exists hereunder, (ii) the Lessee is complying with the provisions of the Consent and (iii) the Vendor is entitled to apply the Payments as defined in the Lease Assignment in accordance with the Lease Assignment, the Lessee shall be entitled to the possession of the Units and to the use of the Units by it or any affiliate upon lines of railroad owned or operated by it or any such affiliate or upon lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such affiliate is regularly operated pursuant to contract and shall be entitled to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements and to assign its rights to the Units or to sublease the Units to any of its affiliates or to any railroad company incorporated in the United States of America or any state thereof or the District of Columbia, but only upon and subject to all the terms and conditions of this Lease and the CSA; provided, however, that any such sublease to any nonaffiliated railroad company shall not exceed a period equal to 180 days for any 12-month period, and provided further, however, that the Lessee shall not assign, sublease or permit the assignment, sublease or use of any Unit outside the continental United States of America nor shall the Lessee assign or sublease to, or permit the sublease or use of the Units by, any person in whose hands such Units would not qualify as "section 38 property" within the meaning of the Internal Revenue Code of 1954, as amended to the date hereof. The Lessee may receive and retain compensation for the use of any of the Units from other railroads so using such Units. Any sublease permitted by this paragraph shall be subject and subordinate to the rights and remedies of the Vendor under the CSA and the Lessor under this Lease in respect to the Units covered by such sublease upon the occurrence of an event of default or Event of Default thereunder or hereunder.

15.3. Transfers by Lessee Through Merger, Acquisition or Consolidation. Nothing in this § 15 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any railroad corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety; provided, however, that such assignee or transferee will not, upon the effectiveness of such merger, consolidation or acquisition, be in default under any provision of this Lease and shall have assumed all of the obligations of the Lessee under this Lease, the Consent, the Participation Agreement and the Indemnity Agreement by an appropriate instrument in writing, and provided however, that such assignee or transferee shall have a net worth of at least \$50,000,000 after giving effect to such transaction. In the event any such assignee or transferee does not have such a net worth, the Lessee may nevertheless seek the approval of the Lessor for such assignment or transfer (setting forth all relevant facts), which approval shall not be unreasonably withheld.

#### SECTION 16. PURCHASE OPTION

16.1. Purchase Option. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Lessor not less than 180 days prior to the end of the term of this Lease, elect to purchase all but not less than all the Units then covered by this Lease for the lesser of (i) 35% of the Purchase Price of such Units or (ii) their Fair Market Value.

16.2. Determination of Fair Market Value.  
(1) Fair Market Value shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing buyer and an informed and willing seller under no compulsion to sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such value and it shall be assumed that all the Units have been assembled in one place on the lines of the Lessee.

(2) If, after 30 days from the giving of notice by the Lessee of the Lessee's election to purchase, the

Lessor and the Lessee are unable to agree upon a determination of the Fair Market Value of the Units, such value shall be determined in accordance with the foregoing definition by the following procedure: If either party to such determination shall have given written notice to the other requesting determination of such value by this appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 20 days after such notice is given, each party shall appoint an independent appraiser within 25 days after such notice is given, and the two appraisers so appointed shall within 30 days after such notice is given, appoint a third independent appraiser. If no such third appraiser is appointed within 30 days after such notice is given, either party may apply to the American Arbitration Association to make such appointment, and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Value of the Units within 60 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of Fair Market Value of the single appraiser appointed shall be final. If 3 appraisers shall be appointed, the determination of the appraiser which differs most from the other 2 appraisers shall be excluded, the remaining 2 determinations shall be averaged and such average shall be final and binding upon the parties hereto as the Fair Market Value. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Value and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be borne by the Lessee.

#### SECTION 17. RETURN OF UNITS UPON EXPIRATION OF TERM

As soon as practicable on or after the expiration of the original or extended term of this Lease with respect to any Unit and in any event not later than 30 days thereafter, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor upon such storage tracks of the Lessee as the

Lessor may reasonably designate, or, in the absence of such designation, as the Lessee may select, and permit the Lessor to store such Unit on such tracks for a period not exceeding 180 days and transport the same upon disposition of the Units, at any time within such period, to any reasonable place on the lines of railroad operated by the Lessee, or to any connecting carrier for shipment, all as directed by the Lessor, the movement and storage of such Units to be at the expense and risk of the Lessee. During any such storage period, the Lessee will continue the insurance required hereunder and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser or user of such Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser or user, the rights of inspection granted under this sentence. Each Unit returned to the Lessor pursuant to this 17 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, ordinary wear and tear excepted, (ii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads and/or the applicable rules of any governmental agency or other organization with jurisdiction and (iii) have attached or affixed thereto any special device considered an accession thereto as provided in § 11 hereof and have removed therefrom any such device not so considered an accession. During any such storage period the Lessee shall maintain the Units in such manner as the Lessee normally maintains similar units of railroad equipment owned or leased by it in similar storage circumstances. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units.

#### SECTION 18. RECORDING

The Lessee, at its own expense, will cause this Lease, the CSA, the CSA Assignment and the Lease Assignment to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303. The Lessee will undertake the filing required of the Lessor under the CSA. The Lessee in

addition will from time to time do and perform any other act and will execute, acknowledge, deliver and file (and will refile whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the CSA, the CSA Assignment and the Lease Assignment; and the Lessee will promptly furnish to the Vendor and the Lessor evidence of all such filings and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor.

#### SECTION 19. INTEREST ON OVERDUE RENTALS

Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount equal to interest at 14-1/8% per annum of the overdue rentals and other obligations for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

#### SECTION 20. LESSOR'S RIGHT TO PERFORM FOR THE LESSEE

If the Lessee fails to perform or comply with any of its agreements contained herein, the Lessor may (but shall not be obligated to do so) upon notice to the Lessee itself perform or comply with such agreement, and the amount of the reasonable cost and expenses of the Lessor incurred in connection with such performance or compliance, together with interest on such amount at the rate per annum which [name of bank] charges for unsecured 90-day loans to large corporate borrowers at the time in effect, shall be payable by the Lessee upon demand except as otherwise provided in this Lease. No such performance or compliance by the Lessor shall be deemed a waiver of the rights and remedies of the Lessor or any assignee of the Lessor against the Lessee hereunder or be deemed to cure the default of the Lessee hereunder.

#### SECTION 21. NOTICES

Any notice required or permitted to be given by either party hereto to the other shall be deemed to have

been given when mailed, first class, postage prepaid, addressed as follows:

(a) if to the Lessor, at One Constitution Plaza, Hartford, Connecticut 06115, Attention of Corporate Trust Department, with a copy to the Owner at its address set forth in Appendix II to the Participation Agreement; and

(b) if to the Lessee, at 701 Commerce Street, Dallas, Texas 75202, Attention of Karl R. Ziebarth, Executive Vice President--Financial;

or addressed to any party at such other address as such party shall hereafter furnish to the other parties in writing.

#### SECTION 22. SEVERABILITY

Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

#### SECTION 23. EFFECT AND MODIFICATION OF LEASE

Except for the Participation Agreement and the Indemnity Agreement, this Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Lessor and the Lessee.

#### SECTION 24. THIRD PARTY BENEFICIARIES

Nothing in this Lease shall be deemed to create any right in any person not a party hereto (other than the Owner, the Vendor and the permitted successors and assigns of a party, and, as to Section 12.2 hereof, the Builder) and this instrument shall not be construed in any respect to be

a contract in whole or in part for the benefit of a third party except as aforesaid.

#### SECTION 25. EXECUTION

This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Vendor pursuant to the Lease Assignment shall be deemed to be the original and all other counterparts shall be deemed duplicates thereof. Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

#### SECTION 26. LAW GOVERNING

The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Texas; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303.

#### SECTION 27. NO RECOURSE

Anything herein to the contrary notwithstanding, each and all of the representations, warranties and agreements herein made on the part of the financial institution acting as Lessor are each and every one of them made and intended not as personal representations, warranties and agreements by said financial institution in its individual capacity or for the purpose or with the intention of binding said financial institution personally, but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and this Lease is executed and delivered by the Lessor solely in the exercise of the powers expressly conferred upon it as trustee under the Trust Agreement; and no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said financial institution on account of any representation, warranty or agreement hereunder of the Lessor, either expressed or implied, all such personal liability, if any, being expressly waived and released by the Lessee and by all persons claiming by, through or under the Lessee.



SECTION 28. AGREEMENTS FOR BENEFIT OF OWNER  
AND OWNER'S AND LESSOR'S ASSIGNS

All rights of the Lessor hereunder (including, but not limited to, its rights under Sections 7, 9, 13, 14 and 17 and the right to receive the rentals payable under this Lease) shall inure to the benefit of the Owner and any of the Owner's assigns under the Trust Agreement and the Lessor's assigns including the Vendor.

The Lessee agrees for the benefit of the Owner that the Lessee's obligations under the Indemnity Agreement shall be considered rights and obligations under this Lease and inseparable therefrom.

SECTION 29. TERM LESSOR OR LESSEE

Whenever the term "Lessor" is used in this Lease it shall apply and refer to the Lessor and any assignee of the Lessor (including, so long as any CSA Indebtedness under the CSA or interest thereon shall remain unpaid or any other obligation thereunder be continuing, the Vendor).

SECTION 30. FINANCE LEASE ELECTION


The Lessor and the Lessee hereby elect to have the provisions of Section 168(f)(8) of the Internal Revenue Code apply with respect to this Lease. The Lessor and the Lessee hereby agree as provided for in said Section 168(f)(8) that this Lease shall constitute and be characterized as a Lease, and that the Lessor shall be the lessor, the Owner shall be the owner and the Lessee shall be the lessee, of the units of Equipment for Federal tax law purposes. The Lessee further agrees to prepare in a timely and proper manner, and the Lessor and the Lessee agree to file, all elections, returns or statements required under said Section 168(f)(8), or any regulations thereunder, and to take any other appropriate actions to have this Lease treated as a lease for Federal tax law purposes. The Lessor and the Lessee further agree that the election pursuant to said

Section 168(f)(8) shall not be revocable without the consent of both the Lessor and the Lessee to such revocation.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

MISSOURI-KANSAS-TEXAS RAILROAD  
COMPANY,

by

  
Vice President.

[Seal]

Attest:

  
Assistant Secretary

THE CONNECTICUT BANK AND TRUST  
COMPANY, NATIONAL ASSOCIATION,  
as Trustee as aforesaid,

by

\_\_\_\_\_  
Authorized Officer

[Seal]

Attest:

\_\_\_\_\_  
Authorized Officer

STATE OF TEXAS, )  
 ) ss.:  
COUNTY OF DALLAS, )

On this 9th day of April 1984, before me personally appeared Karl R. Ziebarth, to me personally known, who, being by me duly sworn, says that he is a Vice President of Missouri-Kansas-Texas Railroad Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

[Notarial Seal]

Virginia A. Schoeneberger  
Notary Public  
Virginia A. Schoeneberger

My Commission expires March 24, 1986.

STATE OF CONNECTICUT, )  
 ) ss.:  
COUNTY OF HARTFORD, )

On this            day of April 1984, before me personally appeared            to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of THE CONNECTICUT BANK AND TRUST COMPANY, NATIONAL ASSOCIATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation and that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

[Notarial Seal]

\_\_\_\_\_  
Notary Public

My Commission expires

# APPENDIX A TO LEASE

<u>Type</u>	<u>Builder</u>	<u>Builder's Specifi- cations</u>	<u>Builder's Plant</u>	<u>Quantity</u>	<u>Lessee Road Numbers (Both Inclusive)</u>	<u>Estimated* Unit Base Price</u>	<u>Estimated* Total Base Price</u>	<u>Estimated Time and Place of Delivery</u>
3,700 h.p. Model GP-39-2 diesel- electric loco- motive	EMD	8075	McCook, Illinois	8	MKT 360-367	\$ 822,300	\$ 6,578,400	February-May 1984 at Parsons, Kansas

---

\* Includes prepaid freight of \$3,700 per Unit to McBaine, Missouri.

APPENDIX B TO LEASE

Basic Lease Rates

<u>Date</u>	<u>Percentage of Purchase Price*</u>
9/15/84	2.70700%
12/15/84	2.70700%
3/15/85	2.70700%
6/15/85	2.70700%
9/15/85	2.70700%
12/15/85	2.70700%
3/15/86	2.70700%
6/15/86	2.70700%
9/15/86	2.70700%
12/15/86	2.70700%
3/15/87	2.70700%
6/15/87	2.70700%
9/15/87	2.70700%
12/15/87	2.70700%
3/15/88	2.70700%
6/15/88	2.70700%
9/15/88	2.70700%
12/15/88	2.70700%
3/15/89	2.70700%
6/15/89	2.70700%
9/15/89	2.70700%
12/15/89	2.70700%
3/15/90	2.70700%
6/15/90	2.70700%
9/15/90	2.70700%
12/15/90	2.70700%
3/15/91	2.70700%
6/15/91	2.70700%
9/15/91	2.70700%
12/15/91	2.70700%
3/15/92	3.30855%
6/15/92	3.30855%
9/15/92	3.30855%

---

\* As defined in paragraph 4.1 of the CSA.

<u>Date</u>	<u>Percentage of Purchase Price</u>
12/15/92	3.308555%
3/15/93	3.308555%
6/15/93	3.308555%
9/15/93	3.308555%
12/15/93	3.308555%
3/15/94	3.308555%
6/15/94	3.308555%
9/15/94	3.308555%
12/15/94	3.308555%
3/15/95	3.308555%
6/15/95	3.308555%
9/15/95	3.308555%
12/15/95	3.308555%
3/15/96	3.308555%
6/15/96	3.308555%
9/15/96	3.308555%
12/15/96	3.308555%
3/15/97	3.308555%
6/15/97	3.308555%
9/15/97	3.308555%
12/15/97	3.308555%
3/15/98	3.308555%
6/15/98	3.308555%
9/15/98	3.308555%
12/15/98	3.308555%
3/15/99	3.308555%
6/15/99	3.3085638%

# APPENDIX C TO LEASE

## Casualty Values

<u>Casualty Payment Dates</u>	<u>Percentage of Purchase Price*</u>
9/15/84	102.3820232
12/15/84	104.4656833
3/15/85	106.4302212
6/15/85	108.2967131
9/15/85	107.0161155
12/15/85	108.5291482
3/15/86	109.9029110
6/15/86	111.1436434
9/15/86	109.2182239
12/15/86	110.0701451
3/15/87	110.7658045
6/15/87	111.3074473
9/15/87	108.6586401
12/15/87	108.7599547
3/15/88	108.6735538
6/15/88	108.4034131
9/15/88	104.9129145
12/15/88	104.1385924
3/15/89	103.2401129
6/15/89	102.2868255
9/15/89	98.3796177
12/15/89	97.3751690
3/15/90	96.3454091
6/15/90	95.2894078
9/15/90	94.2106201
12/15/90	93.1044371
3/15/91	91.9896606
6/15/91	90.8780954
9/15/91	89.7869291
12/15/91	88.6810745
3/15/92	86.9559462
6/15/92	85.1865357
9/15/92	83.4111030

---

\* As defined in paragraph 4.1 of the CSA.

Casualty  
Payment Dates

Percentage of  
Purchase Price

12/15/92	81.6060048
3/15/93	79.7703403
6/15/93	77.8916847
9/15/93	76.0072980
12/15/93	74.0918681
3/15/94	72.1444624
6/15/94	70.1518133
9/15/94	68.1538167
12/15/94	66.1234245
3/15/95	64.0596759
6/15/95	61.9484138
9/15/95	59.8323656
12/15/95	57.6826337
3/15/96	55.4982340
6/15/96	53.2640649
9/15/96	51.0258907
12/15/96	48.7528421
3/15/97	46.4439186
6/15/97	44.0830171
9/15/97	41.7191604
12/15/97	39.3193798
3/15/98	36.8826675
6/15/98	34.3958763
9/15/98	31.9442974
12/15/98	29.5263735
3/15/99	27.1447828
6/15/99	24.8572837



LEASE OF RAILROAD EQUIPMENT

Dated as of March 15, 1984

Between

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY,  
as Lessee,

And

THE CONNECTICUT BANK AND TRUST COMPANY,  
NATIONAL ASSOCIATION,  
not in its individual capacity but solely  
as Trustee under a Trust Agreement dated as  
of the date hereof,  
as Lessor.

---

The rights and interests of the Lessor under this Lease are subject to a security interest in favor of Mercantile-Safe Deposit and Trust Company, as Agent for a certain Institutional Investor. The original of this Lease is held by said Agent.

---

## LEASE OF RAILROAD EQUIPMENT

### TABLE OF CONTENTS\*

	<u>Page</u>
PARTIES .....	L-1
PREAMBLES .....	L-1
GRANTING CLAUSE .....	L-1
SECTION 1. NET LEASE .....	L-2
SECTION 2. DELIVERY AND ACCEPTANCE OF UNITS .....	L-3
SECTION 3. RENTALS .....	L-3
3.1. Amount and Date of Payment .....	L-3
3.2. Payments on Nonbusiness Days .....	L-5
3.3. Instructions To Pay Vendor and Lessor .....	L-5
3.4. Payment in Immediately Available Funds .....	L-5
SECTION 4. TERM OF LEASE .....	L-6
4.1. Beginning and Termination; Survival .....	L-6
4.2. Rights and Obligations of Lessee Subject to CSA .....	L-6
SECTION 5. IDENTIFICATION MARKS .....	L-6
5.1. Identifying Numbers; Legend; Changes .....	L-6
5.2. Insignia of Lessee .....	L-7
SECTION 6. TAXES .....	L-7
6.1. Indemnification for Nonincome Taxes .....	L-7
6.2. Claims; Contests; Refunds .....	L-9
6.3. Reports or Returns .....	L-9
6.4. Survival .....	L-10

---

\* This Table of Contents has been included in this document for convenience only and does not form a part of, or affect any construction or interpretation of, this document.

SECTION 7. PAYMENT FOR CASUALTY OCCURRENCES;	
INSURANCE .....	L-10
7.1. Definitions of Casualty Occurrence;	
Payments .....	L-10
7.2. Requisition by United States Government .....	L-11
7.3. Lessee Agent for Disposal .....	L-12
7.4. Payments After Expiration of Lease .....	L-12
7.5. Amount of Casualty Value .....	L-12
7.6. No Release .....	L-12
7.7. Insurance To Be Maintained .....	L-13
7.8. Insurance Proceeds and Condemnation	
Payments .....	L-14
SECTION 8. REPORTS .....	L-14
SECTION 9. DISCLAIMER OF WARRANTIES .....	L-15
SECTION 10. LAWS AND RULES .....	L-16
10.1. Compliance .....	L-16
10.2. Reports by Lessor .....	L-16
SECTION 11. MAINTENANCE .....	L-16
11.1. Units in Good Operating Order .....	L-16
11.2. Additions and Accessions .....	L-17
SECTION 12. INDEMNIFICATION .....	L-17
12.1. Indemnified Persons .....	L-17
12.2. Indemnification of Builder .....	L-19
12.3. Survival .....	L-20
SECTION 13. DEFAULT .....	L-20
13.1. Events of Default; Remedies .....	L-20
13.2. Remedies Not Exclusive; Waiver .....	L-23
13.3. Failure To Exercise Rights Is Not Waiver .....	L-23
13.4. Notice of Event of Default .....	L-24
SECTION 14. RETURN OF UNITS UPON DEFAULT .....	L-24
14.1. Return of Units .....	L-24
14.2. Lessor Appointed Agent of Lessee .....	L-25
SECTION 15. ASSIGNMENT, POSSESSION AND USE .....	L-25
15.1. Assignment; Consent .....	L-25
15.2. Lessee's Rights To Use the Units, To Permit	
Use Thereof by Others and To Sublease	
the Units .....	L-26
15.3. Transfers by Lessee Through Merger,	
Acquisition or Consolidation .....	L-27

SECTION 16. PURCHASE OPTION .....	L-28
16.1. Purchase Option .....	L-28
16.2. Determination of Fair Market Value .....	L-28
SECTION 17. RETURN OF UNITS UPON EXPIRATION OF TERM .....	L-29
SECTION 18. RECORDING .....	L-30
SECTION 19. INTEREST ON OVERDUE RENTALS .....	L-30
SECTION 20. LESSOR'S RIGHT TO PERFORM FOR THE LESSEE ..	L-31
SECTION 21. NOTICES .....	L-31
SECTION 22. SEVERABILITY .....	L-31
SECTION 23. EFFECT AND MODIFICATION OF LEASE .....	L-32
SECTION 24. THIRD PARTY BENEFICIARIES .....	L-32
SECTION 25. EXECUTION .....	L-32
SECTION 26. LAW GOVERNING .....	L-32
SECTION 27. NO RECOURSE .....	L-33
SECTION 28. AGREEMENTS FOR BENEFIT OF OWNER AND OWNER'S AND LESSOR'S ASSIGNS .....	L-33
SECTION 29. TERM LESSOR AND LESSEE .....	L-33
SECTION 30. FINANCE LEASE ELECTION .....	L-34
TESTIMONIUM .....	L-34
SIGNATURES .....	L-34
ACKNOWLEDGMENTS .....	L-36
APPENDIX A Units Leased .....	L-37
APPENDIX B Rental Rates .....	L-38
APPENDIX C Schedule of Casualty Values .....	L-40

LEASE OF RAILROAD EQUIPMENT dated as of March 15, 1984, between MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, a Delaware corporation ("Lessee"), and THE CONNECTICUT BANK AND TRUST COMPANY, NATIONAL ASSOCIATION, not in its individual capacity but solely as Trustee ("Lessor") under a Trust Agreement dated as of the date hereof ("Trust Agreement") with MERCANTILE TRUST COMPANY N.A. ("Owner").

WHEREAS the Lessor is entering into a Conditional Sale Agreement dated as of the date hereof ("CSA") with General Motors Corporation (Electro-Motive Division) ("Builder") by which the Builder has agreed to manufacture, sell and deliver to the Lessor the units of railroad equipment described in Appendix A hereto;

WHEREAS the Builder is assigning its interests in the CSA pursuant to an Agreement and Assignment dated the date hereof ("CSA Assignment") to Mercantile-Safe Deposit and Trust Company, acting as agent for a certain investor under a Participation Agreement dated as of the date hereof ("Participation Agreement") among said agent, the Lessee, the Lessor, the Owner and the investor named in Appendix I thereto (together with its successors and assigns "Investors") (said agent as so acting, together with its successors and assigns, called "Vendor");

WHEREAS the Lessee desires to lease such number of units of the railroad equipment as are delivered and accepted and settled for under the CSA ("Units") at the rentals and for the terms and upon the conditions hereinafter provided;

WHEREAS the Lessor will assign certain of its rights under this Lease for security to the Vendor pursuant to an Assignment of Lease and Agreement ("Lease Assignment") dated as of the date hereof and the Lessee will acknowledge and consent thereto pursuant to the Consent and Agreement ("Consent") in the form attached to the Lease Assignment; and

WHEREAS the Lessee will agree to indemnify the Owner pursuant to an Indemnity Agreement dated as of the date hereof ("Indemnity Agreement") between the Lessee and the Owner, against certain losses, liabilities or expenses incurred or suffered by the Owner;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions:

#### SECTION 1. NET LEASE

This Lease is a net lease. The Lessee's obligation to pay all rentals and other amounts hereunder shall be absolute and unconditional and, except as herein specifically provided, the Lessee shall not be entitled to any abatement of rent, reduction thereof, recoupment or setoff against rent or such other amounts, including, but not limited to, abatements, reductions, recoupments or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor or the Owner under this Lease or the CSA including the Lessee's rights by subrogation thereunder to the Builder or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or any bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final, and the Lessee shall not seek to recover all

or any part of such payment from the Lessor, the Owner or the Vendor for any reason whatsoever.

## SECTION 2. DELIVERY AND ACCEPTANCE OF UNITS

The Lessor hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the CSA. Each delivery of a Unit to the Lessor under the CSA shall be deemed to be a delivery hereunder to the Lessee at the point or points within the United States of America at which such Unit is so delivered to the Lessor. Upon such delivery, the Lessee will cause an employee of the Lessee to inspect the same and, if such Unit is found to be acceptable, to accept delivery of such Unit on behalf of the Lessor under the CSA and on behalf of itself hereunder and execute and deliver to the Lessor a certificate of acceptance ("Certificate of Acceptance") in accordance with the provisions of Article 3 of the CSA, stating that such Unit has been inspected and accepted on behalf of the Lessee and the Lessor on the date of such Certificate of Acceptance and is marked in accordance with § 5.1 hereof, whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease.

## SECTION 3. RENTALS

3.1. Amount and Date of Payment. (1) The Lessee agrees to pay the Lessor, as rental for each Unit subject to this Lease, (i) one interim rental payable on June 15, 1984, and (ii) 60 consecutive quarterly payments, payable in arrears, on March 15, June 15, September 15 and December 15 in each year commencing September 15, 1984, to and including June 15, 1999. The interim rental for each Unit shall be in an amount equal to 0.0301% of the Purchase Price (as defined in paragraph 4.1 of the CSA) for such Unit for each day elapsed from the Closing Date for such Unit to June 15, 1984. The 60 quarterly rental payments shall each be in an amount equal to the basic lease rate set forth in Appendix B hereto for the applicable payment date multiplied by the Purchase Price of each Unit subject to this Lease. In addition, the Lessee agrees to pay the Lessor as additional rentals for each Unit subject to this Lease (i) on the Repayment Date (as defined in the first paragraph of Paragraph 9 of the Participation Agreement) an amount equal to the interest payable under clause (a) of the second paragraph of said Paragraph 9, (ii) on June 15, 1984, an amount equal to interest accrued on the amount deposited by

the Investor from the Deposit Date to the various Closing Dates and (iii) from time to time upon demand of the Lessor an amount equal to any Investment Deficiency (as defined in the third paragraph of Paragraph 2 of the Participation Agreement).

(2) The basic lease rates set forth in Appendix B hereto have been calculated on the assumption that the Units will have been settled for on the date and in the amount as follows:

<u>Assumed Settlement Date</u>	<u>Assumed Settlement Amount</u>
April 30, 1984	\$6,578,400

If for any reason any Units are settled for other than on the Assumed Settlement Date or other than in the Assumed Settlement Amount, then such basic lease rates (and the related Casualty Values set forth in Appendix C hereto) payable by the Lessee hereunder in respect of the Units from and after September 15, 1984, shall be increased or decreased, as the case may be, by such amount as shall, in the reasonable opinion of the Owner, cause the Owner's after-tax economic yields and cash flows (computed on the same assumptions, including tax rate, as were utilized by the Owner in originally evaluating this transaction, such yields and cash flows being hereinafter called "Net Economic Return") to equal the Net Economic Return that would have been realized by the Owner if all Units had been settled for on the Assumed Settlement Date in the Assumed Settlement Amount. The Lessor shall provide a schedule of such rentals and Casualty Values to the Lessee and the Vendor promptly after the facts have been determined and the calculations have been made by the Owner.

(3) In the event that any dispute should arise as to the calculation of such rentals under § 3.1(2) (or the related Casualty Values), the Lessee agrees, pending resolution of such dispute, to pay on account of such rentals (or such Casualty Values), on the dates due hereunder, amounts at least equal to the principal and/or interest payable on each such date under paragraphs 4.3(b), 4.4 and 7.2 of the CSA, but no such payment shall, as between the Lessor and the Lessee, prejudice the right of the Lessor to receive from the Lessee any amount in addition thereto, due and payable hereunder.

(4) Anything in the foregoing provisions of this § 3.1 to the contrary notwithstanding, it is agreed that the



aggregate of the rentals payable pursuant to this § 3.1 on each rental payment date shall in no event be less than the principal and interest payment due on each such date pursuant to paragraphs 4.3(b) and 4.4 of the CSA.

3.2. Payments on Nonbusiness Days. If any of the rental payment dates referred to in § 3.1 is not a business day the rental payment otherwise payable on such date shall be payable on the next business day, and no interest shall be payable thereon for the period from and after the scheduled date for payment thereof to such next business day. The term "business day" as used herein means a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York, Hartford, Connecticut, Baltimore, Maryland, or Dallas, Texas, are authorized or obligated to remain closed.

3.3. Instructions To Pay Vendor and Lessor. If the Lease Assignment is executed and delivered, until the Vendor shall have advised the Lessee in writing that all sums due from the Lessor under the CSA have been fully satisfied and discharged, the Lessor irrevocably instructs the Lessee to make all Payments (as defined in the Lease Assignment) to the Vendor, for the account of the Lessor, in care of the Vendor, with instructions to the Vendor (a) first to apply such payments to satisfy the obligations of the Lessor under the CSA known to the Vendor to be due and payable on the date such payments are due and payable hereunder and (b) second, so long as no event of default under the CSA shall have occurred and be continuing, to pay any balance promptly to the Lessor or to the order of the Lessor in immediately available funds at such place as the Lessor shall specify in writing. If the Lease Assignment is not executed and delivered, or if the Lessee shall have been advised by the Vendor in writing that all sums due from the Lessor under the CSA have been fully discharged and satisfied, the installments of rental due hereunder and any Casualty Payments thereafter due pursuant to § 7 hereof shall be made to the Lessor in immediately available funds in the manner provided in § 3.4 hereof.

3.4. Payment in Immediately Available Funds. The Lessee agrees to make each payment provided for herein as contemplated by § 3.1 in immediately available funds at or prior to 11:00 a.m. in the city where such payment is to be made.

#### SECTION 4. TERM OF LEASE

4.1. Beginning and Termination; Survival. The term of this Lease as to each Unit shall begin on the date of delivery of such Unit under the CSA and, subject to the provisions of §§ 7, 13 and 16 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to § 3.1 hereof. The obligations of the Lessee hereunder (including, but not limited to, the obligations under §§ 6, 7, 10, 11, 12, 14, 17 and 19 hereof) shall survive the expiration of the term of this Lease.

4.2. Rights and Obligations of Lessee Subject to CSA. Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessee under this Lease and in and to the Units are subject to the rights of the Vendor under the CSA. If an event of default should occur under the CSA, the Vendor may terminate this Lease without affecting the indemnities which by the provisions of this Lease survive the termination of its term (or rescind its termination), all as provided therein; provided, however, that so long as (i) no Event of Default exists hereunder, (ii) the Lessee is complying with the provisions of the Consent and (iii) the Vendor is entitled to apply the Payments as defined in the Lease Assignment in accordance with the Lease Assignment, this Lease may not be terminated and the Lessee shall be entitled to the rights of possession, use and assignment provided under § 15 hereof.

#### SECTION 5. IDENTIFICATION MARKS

5.1. Identifying Numbers; Legend; Changes. The Lessee will cause each Unit to be kept numbered with the road number set forth in Appendix A hereto, or in the case of any Unit not there listed such road number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION", or other appropriate words designated by the Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's and Vendor's title to and property in such Unit and the rights of the Lessor under this Lease and of the rights of the Vendor under the CSA. The Lessee will not place any such Unit in operation or exercise any control or dominion over

the same until such words shall have been so marked on both sides thereof and will replace promptly any such words which may be removed, obliterated, defaced or destroyed. The Lessee will not change the road number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Vendor and the Lessor and filed, recorded and deposited by the Lessee in all public offices where this Lease and the CSA shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished the Vendor and the Lessor an opinion of counsel to the effect that such statement has been so filed, recorded and deposited, such filing, recording and deposit will protect the Vendor's and the Lessor's interests in such Units and no filing, recording, deposit or giving of notice with or to any other Federal, state or local government or agency thereof is necessary to protect the interests of the Vendor and the Lessor in such Units.

5.2. Insignia of Lessee. The Units may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates, but the Lessee will not allow the name of any other person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership.

## SECTION 6. TAXES

6.1. Indemnification for Nonincome Taxes. Whether or not any of the transactions contemplated hereby are consummated, the Lessee agrees to pay, and to indemnify and hold the Lessor (both in its individual and fiduciary capacities), the Owner, the Vendor and each Investor harmless from, all taxes, assessments, fees and charges of any nature whatsoever, together with any penalties, fines, additions to tax or interest thereon, howsoever imposed, whether levied or imposed upon the Lessor, the Vendor, the Lessee, the trust estate created by the Trust Agreement or otherwise, by any Federal, state or local government or governmental subdivision in the United States or by any foreign country or subdivision thereof, upon or with respect to, any Unit or any part thereof; the purchase, ownership, delivery, leasing, possession, use, operation, transfer of title, return or other disposition thereof; the indebtedness with respect thereto; the rentals, receipts or earnings arising therefrom; or this Lease, the Trust Agreement, the Participation Agreement, the CSA, the CSA Assignment, the Lease Assignment, any payment made pursuant to any such

agreement, or the property, the income or other proceeds received with respect to property held in trust by the Lessor under the Trust Agreement (all such taxes, assessments, fees, charges, penalties, fines, additions to tax and interest imposed as aforesaid being hereinafter called "Taxes"); excluding, however: (i) Taxes of the United States or of any state or political subdivision thereof and (if and to the extent that any person indemnified hereunder is entitled to a credit therefor against its United States Federal income taxes or is indemnified by the Lessee pursuant to the Indemnity Agreement) of any foreign country or subdivision thereof, imposed on or measured solely by the net income or excess profits of the Lessor (in its individual capacity), the Owner or the Vendor, or franchise taxes to the extent measured by gross receipts or net income based on gross receipts of the Lessor or the Vendor, or gross receipts taxes other than gross receipts taxes in the nature of sales or use taxes, and other than Taxes arising out of or imposed in respect of the receipt of indemnification payments pursuant to this Lease; provided that Taxes of any foreign country or subdivision thereof incurred as a result of the indemnified party being taxed by such foreign country or subdivision on its world-wide income without regard to the transactions contemplated by this Lease shall be excluded in all cases, whether or not the indemnified party is entitled to a credit against its United States Federal income taxes; (ii) any Taxes imposed as a direct result of a voluntary transfer or other voluntary disposition by the Owner unless such transfer or disposition is the direct result of a breach by the Lessee of any of its obligations under this Lease, the Indemnity Agreement, the Participation Agreement and the Lease Assignment and Consent, or any transfer or disposition by the Owner resulting from bankruptcy or other proceedings for the relief of debtors in which the Owner is the debtor, whether voluntary or involuntary, of any interest in any Unit or interest in rentals under this Lease; (iii) any Taxes imposed on or measured by any fees or compensation received by the Lessor, the Owner or the Vendor; and (iv) Taxes which are imposed on or measured solely by the net income of the Lessor, the Owner or the Vendor if and to the extent that such Taxes are in substitution for or reduce the Taxes payable by any other person which the Lessee has not agreed to pay or indemnify against pursuant to this § 6.1; provided, however, that the Lessee shall not be required to pay any Taxes during the period it may be contesting the same in the manner provided in § 6.2 hereof. The Lessee further agrees to pay on or before the time or times prescribed by law any tax imposed on or measured solely by the net income of the Lessee under the laws of the United States or of any state or political subdivision thereof, or of any foreign country or subdivi-

sion thereof which, if unpaid, might result in a lien or other encumbrance upon any Unit; provided, however, that the Lessee shall not be required to pay any such tax during the period it may be contesting the same in good faith by appropriate proceedings if in the opinion of the Lessor or the Vendor such contest or the nonpayment of such tax would not adversely affect the title, property or rights of the Lessor hereunder or of the Vendor under the CSA.

6.2. Claims; Contests; Refunds. If claim is made against the Lessor or the Vendor for any Taxes indemnified against under this § 6, such party shall promptly notify the Lessee. If reasonably requested by the Lessee in writing, the Lessor or the Vendor, as the case may be, shall, upon receipt of any indemnity satisfactory to it for all its reasonable charges for its services rendered in connection therewith and for all costs, expenses, losses, legal and accountants' fees and disbursements, penalties, fines, additions to tax and interest, and at the expense of the Lessee, contest in good faith the validity, applicability or amount of such Taxes by (a) resisting payment thereof if possible, (b) not paying the same except under protest, if protest is necessary and proper, or (c) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative or judicial proceedings, or both. The Lessee may also contest, at its own expense, the validity, applicability or amount of such Taxes in the name of the Lessor or the Vendor; provided that no proceeding or actions relating to such contest shall be commenced (nor shall any pleading, motion, brief or other paper be submitted or filed in the name of the Lessor or the Vendor in any such proceeding or action) if in the opinion of the Lessor or the Vendor such contest or the nonpayment of the Taxes would adversely affect the title, property or rights of the Lessor hereunder or of the Vendor under the CSA. The Lessee agrees to give the Lessor and the Vendor reasonable notice of such contest prior to the commencement thereof. If the Lessor or the Vendor shall obtain a refund of all or any part of such Taxes previously reimbursed by the Lessee in connection with any such contest or an amount representing interest thereon, the Lessor or the Vendor, as the case may be, shall pay the Lessee the amount of such refund or interest net of reasonable contest expenses incurred, and such amount shall not exceed the amount previously paid or reimbursed by the Lessee, expenses; provided, however, that no Event of Default and no event which with notice or lapse of time or both would constitute an Event of Default shall have occurred and be continuing.

6.3. Reports or Returns. In case any report or return is required to be made with respect to any obligation

of the Lessee under or arising out of this § 6 (except obligations resulting from the last sentence of § 6.1), the Lessee will, where permitted to do so under applicable rules and regulations, make and timely file such reports and returns in such manner as to show the interest of the Lessor and the Vendor in the Units as shall be satisfactory to the Lessor and the Vendor or, where not so permitted, will notify the Lessor, the Vendor and the Owner of such requirement and will prepare and deliver such reports to the Lessor and the Vendor within a reasonable time prior to the time such reports are to be filed. All costs and expenses (including legal and accountants' fees) of preparing any such return or report shall be borne by the Lessee.

6.4. Survival. All the obligations of the Lessee under this § 6 shall survive and continue, but only with respect to periods included in the term of this Lease, notwithstanding payment in full of all amounts due under the CSA or the termination of this Lease. Payments due from the Lessee to the Lessor or the Vendor under this § 6 shall be made directly to the party indemnified.

6.5. Gross Up. The amounts payable by the Lessee under § 6.1 to the Owner or the Investor shall be adjusted to account for all taxes required to be paid by the Owner or Investor in respect of the receipt of such amounts and for any deductions or credits to which the Owner or Investor are entitled in respect of the payment of such Taxes under the laws of any Federal, state or local government or taxing authority of the United States. For purposes of this adjustment, it shall be assumed that the highest normal corporate income tax rate under the Internal Revenue Code of 1954, as amended and in effect from time to time (currently 46%) applied to all the ordinary income of the Owner and the Investor.

## SECTION 7. PAYMENT FOR CASUALTY OCCURRENCES; INSURANCE

7.1. Definitions of Casualty Occurrence; Payments. In the event that any Unit of Equipment shall be or become worn out, lost, stolen, destroyed, or, in the opinion of the Lessee, irreparably damaged, from any cause whatsoever during the term of this Lease or any renewal term hereof or until such Unit is returned pursuant to § 14 or § 17 hereof, or the Purchase Price of any Unit shall have been refunded by the Builder of such Unit pursuant to the terms of its patent indemnity therefor or any Unit shall be taken or requisitioned by condemnation or otherwise by the United States Government for a stated period which shall exceed the then remaining term of this Lease or by any other

governmental entity resulting in loss of possession by the Lessee for a period of 90 consecutive days during the term of this Lease or during any renewal term hereof ("Casualty Occurrence"), the Lessee shall promptly and fully notify the Lessor and the Vendor with respect thereto. On the next succeeding rental payment date occurring at least 10 days after such notice from the Lessee has been received (each such date being hereinafter called a "Casualty Payment Date"), the Lessee shall pay to the Lessor a sum equal to the Casualty Value (as hereinafter defined) of any such Unit as of such Casualty Payment Date plus the rental for such Unit payable on the Casualty Payment Date; provided, however, that in the event of a Casualty Occurrence during the period any Unit is required to be returned pursuant to § 14 or § 17 hereof and the 10 days prior thereto, the Lessee shall make such payment of the Casualty Value, and any earnings or rentals accrued pursuant to § 14 or § 17 hereof, to the Lessor on a date 30 days after such Casualty Occurrence. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft, complete destruction or return to the Builder of such Unit) the Lessor shall be entitled to recover possession of such Unit; but the Lessee as agent for the Lessor may sell such Unit for its salvage value, at a price acceptable to the Lessor, and the Lessee may retain from the proceeds of such sale any amount up to the Casualty Value paid in respect thereof and any excess shall be paid to the Lessor.

In addition to the occurrences constituting a Casualty Occurrence under the preceding paragraph, if any Unit shall have been taken or requisitioned by the United States Government or any other governmental entity and such taking or requisition shall not theretofore constitute a Casualty Occurrence as aforesaid, such taking or requisition shall be deemed a Casualty Occurrence if the same shall be continuing at the end of the original or any renewal term of this Lease; in which event the Lessee shall promptly and fully notify the Lessor with respect thereto and pay the Lessor an amount equal to the Casualty Value of such Unit as of the end of such term. Following such payment, the Lessee shall be entitled to receive condemnation payments in respect of such Unit up to an amount equal to such Casualty Value and any balance of such payments shall be the property of the Lessor. In the event such Unit shall be returned by the governmental entity prior to the time the Lessee shall have been reimbursed by such application of condemnation payments in an amount equal to such Casualty Value, then the

Lessee shall dispose of such Unit as agent for the Lessor and shall retain the proceeds of such disposition to the extent that the aggregate of the amounts so retained and the condemnation payments theretofore received by the Lessee shall equal such Casualty Value, and the balance of such proceeds shall be promptly paid to the Lessor. In the event such Unit shall be returned by the governmental entity following the time the Lessee shall have been reimbursed by such application of condemnation payments in an amount equal to such Casualty Value, such Unit shall be returned by the Lessee to the Lessor in the manner provided in § 17 hereof.

7.2. Requisition by United States Government. In the event of the requisition for use by the United States Government of any Unit for a period which does not exceed the then remaining term of this Lease (except where deemed a Casualty Occurrence pursuant to the last paragraph of § 7.1 hereof), all of the Lessee's obligations under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred. All payments received by the Lessor or the Lessee from the United States Government for the use of such Unit during the term of this Lease shall be paid over to, or retained by, the Lessee; provided that no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing.

7.3. Lessee Agent for Disposal. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof before and after expiration of this Lease, at the best price obtainable under the circumstances on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Lessor (i) the Lessee shall be entitled to the net proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor and (ii) the Lessee shall be entitled to credit against the Casualty Value payable in respect of any Unit returned to a Builder pursuant to the patent indemnity provisions of the CSA an amount equal to any payment made by such Builder to the Lessor in respect thereof under the CSA.

7.4. Payments After Expiration of Lease. If the date upon which the making of the payment by the Lessee in § 7.1 hereof in respect of any Unit is required as aforesaid shall be after the term of this Lease or any renewal term thereof in respect of such Unit has expired, no rental for such Unit shall accrue after the end of such term.



7.5. Amount of Casualty Value. The Casualty Value of each Unit as of the Casualty Payment Date on which payment is made shall be an amount equal to that percentage of the Purchase Price of such Unit as is set forth in Appendix C hereto opposite the Casualty Payment Date next succeeding the actual date of such Casualty Occurrence or, if there is no such Casualty Payment Date, the last rental payment date; but in no event shall such amount be less than the "Casualty Value" (as defined in Section 7.4 of the CSA) as of such Casualty Payment Date.

7.6. No Release. Except as hereinabove in this § 7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessee hereunder.

7.7. Insurance To Be Maintained. (1) The Lessee will, at all times prior to the return of the Units to the Lessor, at its own expense, cause to be carried and maintained (i) property insurance in respect of the Units at the time subject hereto; provided, however, that the Lessee may self-insure such Units to the extent it self-insures equipment similar to the Units and to the extent such self-insurance is consistent with prudent industry practice, and (ii) public liability insurance with respect to third-party personal and property damage, and the Lessee will continue to carry such insurance in such amounts and for such risks and with such insurance companies as is consistent with prudent industry practice but in any event at least, not less comprehensive in amounts and against risks customarily insured against by the Lessee in respect of equipment owned or leased by it similar in nature to the Units, provided further, such policies as required by (i) and (ii) above shall in no event have a deductible in excess of \$2,000,000 irrespective of industry practices. The proceeds of any property insurance shall be payable to the Vendor, the Lessor and the Lessee, as their interests may appear, so long as the indebtedness, if any, evidenced by the CSA shall not have been paid in full, and thereafter to the Lessor and the Lessee as their interests may appear. Any policies of insurance carried in accordance with this paragraph shall name the Lessor, the Owner and the Vendor as additional named insureds and loss payees as their respective interests may appear and in the event such policies shall contain breach of warranty provisions such policies shall provide that in respect of the interests of the Lessor, the Owner and the Vendor in such policies the insurance shall not be invalidated by any action or inaction

of the Lessee or any other person (other than the Lessor and the Vendor, respectively) and shall insure the Lessor, the Owner and the Vendor regardless of any breach or violation of any warranty, declaration or condition contained in such policies by the Lessee or by any other person (other than the Lessor or the Vendor, respectively). Prior to the first date of delivery of any Unit pursuant to the CSA, and thereafter on or before the expiration dates of the expiring policies required hereunder, the Lessee shall deliver to the Lessor and the Vendor certificates of insurance showing compliance with the provisions hereof. Each such certificate shall provide that the issuer thereof shall give 30 days' prior notice to the Lessor, the Owner and the Vendor in the event of cancellation or material change in coverage as to any policy identified in the certificate.

(2) In the event that the Lessee shall fail to maintain insurance as herein provided, the Lessor may at its option provide such insurance (giving the Lessee prompt written notice thereof) and, in such event, the Lessee shall, upon demand from time to time, reimburse the Lessor for the cost thereof together with interest, on the amount of the cost to the Lessor of such insurance which the Lessee shall have failed to maintain, at the rate per annum specified in § 19 hereof.

7.8. Insurance Proceeds and Condemnation Payments. If the Lessor shall receive (directly or from the Vendor) any insurance proceeds or condemnation payments in respect of such Units suffering a Casualty Occurrence, the Lessor shall pay such proceeds or condemnation payments to the Lessee up to an amount equal to the Casualty Value with respect to a Unit paid by the Lessee and any balance of such proceeds or condemnation payments shall remain the property of the Lessor; provided, however, that no Event of Default shall have occurred and be continuing and the Lessee shall have made payment of the Casualty Value thereof, and accrued rentals in respect of such Units, to the Lessor. All insurance proceeds received by the Lessor (directly or from the Vendor) in respect of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired.

## SECTION 8. REPORTS

On or before May 31 in each year, commencing with the calendar year 1985, the Lessee will furnish to the

Lessor and the Vendor an accurate statement (a) setting forth as at the preceding December 31 the total number, description and road numbers of all Units then leased hereunder and covered by the CSA, the total number, description and road numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year or are then undergoing repairs (other than running repairs) or then withdrawn from use pending repair (other than running repairs) and setting forth such other information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by 5.1 hereof have been preserved or replaced. The Lessor, the Vendor and the Owner shall each have the right (but not any obligation) by its agents to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor, the Vendor or the Owner may request during the continuance of this Lease.

#### SECTION 9. DISCLAIMER OF WARRANTIES

THE LESSOR DOES NOT MAKE, HAS NOT MADE AND SHALL NOT BE DEEMED TO MAKE OR HAVE MADE ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR DOES NOT MAKE ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE NOR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, NOR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims the Lessor may have against the Builder under the provisions of Items 3 and 4 of Annex A of the CSA; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused

directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor or the Vendor based on any of the foregoing matters.

#### SECTION 10. LAWS AND RULES

10.1. Compliance. The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units or are necessary to comply with health, safety or environmental standards as more fully described in Section 4(4) of Internal Revenue Service Rev. Proc. 75-21 as modified by Rev. Proc. 79-48, and in the event that such laws or rules require any alteration, replacement or addition of or to any part of any Unit, the Lessee will conform therewith at its own expense; provided, however, that the Lessee may at its own expense, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor or the Vendor, adversely affect the property or rights of the Lessor or the Vendor under this Lease or under the CSA.

10.2. Reports by Lessor. The Lessee will prepare and deliver to the Lessor and the Vendor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor and the Vendor) any and all reports (other than income tax returns) to be filed by the Lessor with any Federal, state or other

regulatory authority by reason of the ownership by the Lessor or the Vendor of the Units or the leasing thereof to the Lessee.

## SECTION 11. MAINTENANCE

11.1. Units in Good Operating Order. The Lessee, at its own cost and expense, will maintain and keep each Unit (including any parts installed on or replacements made to any Unit and considered an accession thereto as hereinbelow provided) which is subject to this Lease in good operating order, repair and condition, ordinary wear and tear excepted.

11.2. Additions and Accessions. (1) Except as set forth in §10.1 and 11.1 hereof, the Lessee, at its own cost and expense, may from time to time make such other additions, modifications and improvements to the Units during the term of this Lease as are readily removable without causing material damage to the Units and do not adversely and materially affect the value of the Units. The additions, modifications and improvements made by the Lessee under the preceding sentence shall be owned by the Lessee if removed from the Units prior to the time such Units are returned as provided in §§ 14 and 17, except to the extent such additions, modifications or improvements are made in order to comply with 11.2(2) hereof.

(2) Any and all parts installed on and additions and replacements made to any Unit (i) which are not readily removable without causing material damage to such Unit and were installed or were added to such Unit in contravention of its agreements contained in § 11.2(1) hereof, or (ii) the cost of which is included in the Purchase Price of such Unit, or (iii) in the course of ordinary maintenance of the Units or (iv) which are required for the operation or use of such Unit by the interchange rules of the Association of American Railroads or by the regulations of the Department of Transportation, the Interstate Commerce Commission or any other applicable regulatory body, shall constitute accessions to such Unit and full ownership thereof free from any lien, charge, security interest or encumbrance (except for those created by the CSA and the CSA Assignment) shall immediately be vested in the Lessor.

(3) In no event shall the cost to the Lessee of any additions, modifications or improvements described in this § 11.2 be considered rent received by the Lessor.

## SECTION 12. INDEMNIFICATION

12.1. Indemnified Persons. The Lessee shall pay, and shall protect, indemnify and hold the Lessor (in both its individual and fiduciary capacities), the Owner, the Vendor, each Investor and their respective successors, assigns, agents and servants ("Indemnified Persons"), harmless from and against any and all causes of action, suits, penalties, claims, demands or judgments, of any nature whatsoever which may be imposed on, incurred by or asserted against any Indemnified Person (including any or all liabilities, obligations, damages, costs, disbursements, expenses [including without limitation attorneys' fees and expenses of any Indemnified Person] relating thereto) in any way relating to or arising, or alleged to arise, out of this Lease, the CSA or the Units, including, without limitation, those in any way relating to or arising or alleged to arise out of (i) the manufacture, construction, purchase, acceptance, rejection, ownership, delivery, nondelivery, lease, possession, use, operation, condition, sale, return or other disposition of any Unit or portion thereof, (ii) any latent and other defects whether or not discoverable by the Lessor, the Owner, the Vendor or the Lessee, (iii) any claim for patent, trademark or copyright infringement, (iv) any claims based on strict liability in tort, (v) any injury to or the death of any person or any damage to or loss of property on or near the Units or in any manner growing out of or concerned with, or alleged to grow out of or be connected with, the ownership, use, replacement, adaptation or maintenance of the Units or of any other equipment in connection with the Units (whether owned or under the control of the Lessor, the Lessee or any other person) or resulting or alleged to result from the condition of any thereof, except as provided by the second sentence of § 17 of this Lease, (vi) any violation of any provision of this Lease (except by the Lessor) or of any agreement, law, rule, regulation, ordinance or restriction affecting or applicable to the Units or the leasing, ownership, use, replacement, adaptation or maintenance thereof, or (vii) any claim arising out of any of the Lessor's obligations under the Lease Assignment or the Vendor's retention of a security interest under the CSA or the Lease Assignment or the Participation Agreement, except to the extent such claim arises from an act or omission of the party claiming indemnification (all of which matters hereinabove set forth in this paragraph being hereinafter called "Indemnified Matters"). The indemnities provided in this § 12.1 do not extend to such liabilities, losses, damages, injuries, penalties, claims, demands, actions, suits, costs, and

expenses as may arise due to the willful misconduct or gross negligence of the party seeking indemnity. The willful misconduct or negligence of any party indemnified hereunder shall not affect the rights of any other party entitled to indemnity. The Lessee shall be obligated under this § 12.1, irrespective of whether any Indemnified Person shall also be indemnified with respect to the same Indemnified Matter under any other agreement by any other person, and the Indemnified Person seeking to enforce the indemnification may proceed directly against the Lessee under this § 12.1 without first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against any Indemnified Person in connection with any Indemnified Matter, the Lessee may and, upon such Indemnified Person's request, will at the Lessee's expense resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by the Lessee and approved by such Indemnified Person and, in the event of any failure by the Lessee to do so, the Lessee shall pay all costs and expenses (including without limitation attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. In the event the Lessee is required to make any payment under this § 12, the Lessee shall pay such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person in respect of the receipt thereof under the laws of the United States or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against, and of any other such taxes as determined in the sole discretion of the Indemnified Person), shall be equal to the amount of such payment. The Lessee and the Lessor each agree to give each other promptly upon obtaining knowledge thereof written notice of any claim or liability hereby indemnified against. Upon the payment in full of any indemnities as contained in this § 12 by the Lessee, and provided that no Event of Default (or other event which with lapse of time or notice or both would constitute an Event of Default) shall have occurred and be continuing, the Lessee shall be subrogated to any right of such Indemnified Person (except against another Indemnified Person) in respect of the Indemnified Matter against which indemnity has been given. Any payments received by such Indemnified Person from any person (except the Lessee) as a result of any Indemnified Matter with respect to which such Indemnified Person has been indemnified by the Lessee pursuant to this § 12.1 shall be paid over to the Lessee to the extent necessary to reimburse the Lessee for indemnification payments previously made to such

Indemnified Person. Nothing in this § 12.1 shall constitute a guarantee by the Lessee of the CSA Indebtedness of the Lessor under the CSA or a guarantee of the residual value of any Unit or indemnification for the tax liability of any Indemnified Person.

12.2. Indemnification of Builder. The Lessee further agrees to indemnify, protect and hold harmless the Builder as a third-party beneficiary hereof from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Builder because of the use in or about the construction or operation of any of the Equipment of any article or material specified by the Lessee and not manufactured by the Builder or of any design, system, process, formula or combination specified by the Lessee and not developed or purported to be developed by the Builder which infringes or is claimed to infringe on any patent or other right. The Lessee will give notice to the Builder of any claim known to the Lessee from which liability may be charged against the Builder hereunder.

12.3. Survival. The indemnities contained in this § 12 shall survive the expiration or termination of this Lease with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of, and shall be enforceable by, any Indemnified Person. None of the indemnities in this § 12 shall be deemed to create any rights of subrogation in any insurer or third party against the Lessee therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

### SECTION 13. DEFAULT

13.1. Events of Default; Remedies. If, during the continuance of this Lease or any extension or renewal thereof, one or more of the following events (each such event being herein sometimes called an "Event of Default") shall occur:

(A) default shall be made in payment of any amount provided for in §§ 3, 7 or 16 hereof, and such default shall continue for 5 business days;

(B) the Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or any



interest herein, or the right to possession of the Units, or any thereof;

(C) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Participation Agreement or the Indemnity Agreement and such default shall continue for 30 days after written notice from the Lessor or the Vendor to the Lessee specifying the default and demanding that the same be remedied;

(D) any representation or warranty made by the Lessee herein or in the Participation Agreement or in any certificate or statement furnished to the Lessor or the Owner pursuant to or in connection with any such agreements proves untrue in any material respect as of the date of issuance or making thereof;

(E) a petition for reorganization under Title 11 of the United States Code, as now constituted or as hereafter amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceeding in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees, within 60 days after such petition shall have been filed and otherwise in accordance with the provisions of 11 U.S.C. § 1168, or any successor provision as the same may hereafter be amended; or

(F) any other proceeding shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of such obligations), and, unless such proceeding shall have been dismissed, nullified, stayed or otherwise rendered

ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee or for the property of the Lessee in connection with any such proceeding in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such a trustee or trustees or receiver or receivers, within 60 days after such proceeding shall have been commenced;

then, in any such case, the Lessor, at its option, may:

(a) proceed by appropriate court action, either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises, insofar as the Lessee may be lawfully authorized so to permit, where any of the Units may be located, without judicial process if this can be done without breach of the peace and in accordance with due process of law, and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and

also to recover forthwith from the Lessee as damages for loss of the bargain and not as a penalty whichever of the following amounts that the Lessor, in its sole discretion, shall specify: (i) a sum, with respect to each Unit, which represents (x) the excess of the present value, at the time of such termination, of the entire unpaid balance of all rentals for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit, such present value to be computed on the basis of a 8% per annum discount, compounded quarterly from the respective dates upon which rental would have been payable hereunder had this Lease not been terminated over the then present value of the rental which the Lessor reasonably estimates to be obtainable for each Unit during such period, such present value to be computed on the basis of a 8% per annum discount, compounded quarterly from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated or, if such Unit is sold, the net proceeds of the sale plus (y) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than for the payment of rental or (ii) an amount equal to the excess, if any, of the Casualty Value as of the Casualty Payment Date on or next preceding the date of termination over the amount the Lessor reasonably estimates to be the sales value of such Unit at such time; provided, however, that in the event the Lessor shall have sold any Unit, the Lessor, in lieu of collecting any amounts payable by the Lessee pursuant to the preceding clause (ii) with respect to such Unit, may, if it shall so elect, demand that the Lessee pay the Lessor and the Lessee shall pay to the Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit, as of the Casualty Payment Date on or next preceding the date of termination over the net proceeds of such sale.

The Lessee will pay all reasonable expenses, including attorneys' fees, incurred by the Lessor in enforcing its remedies under the terms of this Lease.

13.2. Remedies Not Exclusive; Waiver. The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law. The Lessee hereby waives any and all existing or future claims to any offset and/or recoupment against the rental payments due hereunder and agrees to make such payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

13.3. Failure To Exercise Rights Is Not Waiver. The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

13.4. Notice of Event of Default. The Lessee also agrees to furnish the Lessor, the Owner and the Vendor, promptly upon any responsible officer becoming aware of any condition which constituted or constitutes an Event of Default under this Lease or which, after notice or lapse of time, or both, would constitute such an Event of Default, written notice specifying such condition and the nature and status thereof. For the purposes of this § 13.4, a "responsible officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of the Lessee in this Lease contained, any corporate officer of the Lessee who, in the normal performance of his operational responsibilities, would have knowledge of such matter and the requirements of this Lease with respect thereto.

#### SECTION 14. RETURN OF UNITS UPON DEFAULT

14.1. Return of Units. If this Lease shall terminate pursuant to § 13 hereof or pursuant to Article 16 of the CSA, the Lessee shall forthwith deliver possession of the Units to the Lessor. Each Unit so delivered shall be in the same operating order, repair and condition as when

originally delivered to the Lessee, ordinary wear and tear excepted, shall meet the standards then in effect under the Interchange Rules of the Association of American Railroads and/or the applicable rules of any governmental agency or other organization with jurisdiction and shall have attached or affixed thereto any special device considered an accession thereto as provided in § 11 and shall have removed therefrom at the Lessee's expense any addition, modification or improvement which, as provided in § 11, is owned by the Lessee. For the purpose of delivering possession of any Unit or Units as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any Unit or Units have been interchanged or which may have possession thereof to return the Unit or Units) and at the usual speed place such Units upon such storage tracks of the Lessee or any of its affiliates as the Lessor reasonably may designate;

(b) permit the Lessor to store such Units on such tracks at the risk of the Lessee without charge for insurance, rent or storage until all such Units have been sold, leased or otherwise disposed of by the Lessor; and

(c) transport the same to any place on the lines of railroad operated by the Lessee or any of its affiliates or to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store, insure and transport the Units. During any storage period, the Lessee will, at its own cost and expense, maintain and keep the Equipment insured and in good order and repair and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser or user of any such Unit, to inspect the same. All amounts earned in

respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor.

14.2. Lessor Appointed Agent of Lessee. Without in any way limiting the obligation of the Lessee under the foregoing provisions of this 14, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

#### SECTION 15. ASSIGNMENT, POSSESSION AND USE

15.1. Assignment; Consent. This Lease shall be assignable in whole or in part by the Lessor to any successor Lessor which may be appointed pursuant to Article VII of the Trust Agreement or to any banking or financial institution which has a combined capital and surplus of at least \$50,000,000 and which has no interlocking relationship with the Lessee within the meaning of Section 10 of the Clayton Act. The Lessee hereby consents to the assignment of this Lease pursuant to the Lease Assignment.

15.2. Lessee's Rights To Use the Units, To Permit Use Thereof by Others and To Sublease the Units. (1) So long as (i) no Event of Default exists hereunder, (ii) the Lessee is complying with the provisions of the Consent and (iii) the Vendor is entitled to apply the Payments as defined in the Lease Assignment in accordance with the Lease Assignment, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease and the CSA but only within the continental United States of America. Without the prior written consent of the Lessor and the Vendor, the Lessee shall not assign or transfer its leasehold interest under this Lease in any of the Units or sublease any of the Units, except as provided in paragraph (2) of this § 15.2; and the Lessee shall not, without the prior written consent of the Lessor and the Vendor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of paragraph (2) of this § 15.2. The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than

an encumbrance created by the Lessor or the Vendor or resulting from claims against the Lessor or the Vendor not related to the ownership of the Units or any encumbrance on the leasehold estate of the Lessee which is subject and subordinate to the interests of the Lessor and the Vendor) upon or with respect to any Unit, including any accession thereto, or the interest of the Lessor, the Vendor or the Lessee therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises.

(2) So long as (i) no Event of Default exists hereunder, (ii) the Lessee is complying with the provisions of the Consent and (iii) the Vendor is entitled to apply the Payments as defined in the Lease Assignment in accordance with the Lease Assignment, the Lessee shall be entitled to the possession of the Units and to the use of the Units by it or any affiliate upon lines of railroad owned or operated by it or any such affiliate or upon lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such affiliate is regularly operated pursuant to contract and shall be entitled to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements and to assign its rights to the Units or to sublease the Units to any of its affiliates or to any railroad company incorporated in the United States of America or any state thereof or the District of Columbia, but only upon and subject to all the terms and conditions of this Lease and the CSA; provided, however, that any such sublease to any nonaffiliated railroad company shall not exceed a period equal to 180 days for any 12-month period, and provided further, however, that the Lessee shall not assign, sublease or permit the assignment, sublease or use of any Unit outside the continental United States of America nor shall the Lessee assign or sublease to, or permit the sublease or use of the Units by, any person in whose hands such Units would not qualify as "section 38 property" within the meaning of the Internal Revenue Code of 1954, as amended to the date hereof. The Lessee may receive and retain compensation for the use of any of the Units from other railroads so using such Units. Any sublease permitted by this paragraph shall be subject and subordinate to the rights and remedies of the Vendor under the CSA and the Lessor under this Lease in respect to the Units covered by such sublease upon the occurrence of an event of default or Event of Default thereunder or hereunder.

15.3. Transfers by Lessee Through Merger, Acquisition or Consolidation. Nothing in this § 15 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any railroad corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety; provided, however, that such assignee or transferee will not, upon the effectiveness of such merger, consolidation or acquisition, be in default under any provision of this Lease and shall have assumed all of the obligations of the Lessee under this Lease, the Consent, the Participation Agreement and the Indemnity Agreement by an appropriate instrument in writing, and provided however, that such assignee or transferee shall have a net worth of at least \$50,000,000 after giving effect to such transaction. In the event any such assignee or transferee does not have such a net worth, the Lessee may nevertheless seek the approval of the Lessor for such assignment or transfer (setting forth all relevant facts), which approval shall not be unreasonably withheld.

## SECTION 16. PURCHASE OPTION

16.1. Purchase Option. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Lessor not less than 180 days prior to the end of the term of this Lease, elect to purchase all but not less than all the Units then covered by this Lease for the lesser of (i) 35% of the Purchase Price of such Units or (ii) their Fair Market Value.

### 16.2. Determination of Fair Market Value.

(1) Fair Market Value shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing buyer and an informed and willing seller under no compulsion to sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such value and it shall be assumed that all the Units have been assembled in one place on the lines of the Lessee.

(2) If, after 30 days from the giving of notice by the Lessee of the Lessee's election to purchase, the



Lessor and the Lessee are unable to agree upon a determination of the Fair Market Value of the Units, such value shall be determined in accordance with the foregoing definition by the following procedure: If either party to such determination shall have given written notice to the other requesting determination of such value by this appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 20 days after such notice is given, each party shall appoint an independent appraiser within 25 days after such notice is given, and the two appraisers so appointed shall within 30 days after such notice is given, appoint a third independent appraiser. If no such third appraiser is appointed within 30 days after such notice is given, either party may apply to the American Arbitration Association to make such appointment, and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Value of the Units within 60 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of Fair Market Value of the single appraiser appointed shall be final. If 3 appraisers shall be appointed, the determination of the appraiser which differs most from the other 2 appraisers shall be excluded, the remaining 2 determinations shall be averaged and such average shall be final and binding upon the parties hereto as the Fair Market Value. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Value and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be borne by the Lessee.

#### SECTION 17. RETURN OF UNITS UPON EXPIRATION OF TERM

As soon as practicable on or after the expiration of the original or extended term of this Lease with respect to any Unit and in any event not later than 30 days thereafter, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor upon such storage tracks of the Lessee as the

Lessor may reasonably designate, or, in the absence of such designation, as the Lessee may select, and permit the Lessor to store such Unit on such tracks for a period not exceeding 180 days and transport the same upon disposition of the Units, at any time within such period, to any reasonable place on the lines of railroad operated by the Lessee, or to any connecting carrier for shipment, all as directed by the Lessor, the movement and storage of such Units to be at the expense and risk of the Lessee. During any such storage period, the Lessee will continue the insurance required hereunder and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser or user of such Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser or user, the rights of inspection granted under this sentence. Each Unit returned to the Lessor pursuant to this 17 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, ordinary wear and tear excepted, (ii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads and/or the applicable rules of any governmental agency or other organization with jurisdiction and (iii) have attached or affixed thereto any special device considered an accession thereto as provided in § 11 hereof and have removed therefrom any such device not so considered an accession. During any such storage period the Lessee shall maintain the Units in such manner as the Lessee normally maintains similar units of railroad equipment owned or leased by it in similar storage circumstances. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units.

#### SECTION 18. RECORDING

The Lessee, at its own expense, will cause this Lease, the CSA, the CSA Assignment and the Lease Assignment to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303. The Lessee will undertake the filing required of the Lessor under the CSA. The Lessee in

addition will from time to time do and perform any other act and will execute, acknowledge, deliver and file (and will refile whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the CSA, the CSA Assignment and the Lease Assignment; and the Lessee will promptly furnish to the Vendor and the Lessor evidence of all such filings and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor.

#### SECTION 19. INTEREST ON OVERDUE RENTALS

Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount equal to interest at 14-1/8% per annum of the overdue rentals and other obligations for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

#### SECTION 20. LESSOR'S RIGHT TO PERFORM FOR THE LESSEE

If the Lessee fails to perform or comply with any of its agreements contained herein, the Lessor may (but shall not be obligated to do so) upon notice to the Lessee itself perform or comply with such agreement, and the amount of the reasonable cost and expenses of the Lessor incurred in connection with such performance or compliance, together with interest on such amount at the rate per annum which [name of bank] charges for unsecured 90-day loans to large corporate borrowers at the time in effect, shall be payable by the Lessee upon demand except as otherwise provided in this Lease. No such performance or compliance by the Lessor shall be deemed a waiver of the rights and remedies of the Lessor or any assignee of the Lessor against the Lessee hereunder or be deemed to cure the default of the Lessee hereunder.

#### SECTION 21. NOTICES

Any notice required or permitted to be given by either party hereto to the other shall be deemed to have

been given when mailed, first class, postage prepaid, addressed as follows:

(a) if to the Lessor, at One Constitution Plaza, Hartford, Connecticut 06115, Attention of Corporate Trust Department, with a copy to the Owner at its address set forth in Appendix II to the Participation Agreement; and

(b) if to the Lessee, at 701 Commerce Street, Dallas, Texas 75202, Attention of Karl R. Ziebarth, Executive Vice President--Financial;

or addressed to any party at such other address as such party shall hereafter furnish to the other parties in writing.

#### SECTION 22. SEVERABILITY

Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

#### SECTION 23. EFFECT AND MODIFICATION OF LEASE

Except for the Participation Agreement and the Indemnity Agreement, this Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Lessor and the Lessee.

#### SECTION 24. THIRD PARTY BENEFICIARIES

Nothing in this Lease shall be deemed to create any right in any person not a party hereto (other than the Owner, the Vendor and the permitted successors and assigns of a party, and, as to Section 12.2 hereof, the Builder) and this instrument shall not be construed in any respect to be

a contract in whole or in part for the benefit of a third party except as aforesaid.

#### SECTION 25. EXECUTION

This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Vendor pursuant to the Lease Assignment shall be deemed to be the original and all other counterparts shall be deemed duplicates thereof. Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

#### SECTION 26. LAW GOVERNING

The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Texas; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303.

#### SECTION 27. NO RECOURSE

Anything herein to the contrary notwithstanding, each and all of the representations, warranties and agreements herein made on the part of the financial institution acting as Lessor are each and every one of them made and intended not as personal representations, warranties and agreements by said financial institution in its individual capacity or for the purpose or with the intention of binding said financial institution personally, but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and this Lease is executed and delivered by the Lessor solely in the exercise of the powers expressly conferred upon it as trustee under the Trust Agreement; and no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said financial institution on account of any representation, warranty or agreement hereunder of the Lessor, either expressed or implied, all such personal liability, if any, being expressly waived and released by the Lessee and by all persons claiming by, through or under the Lessee.

SECTION 28. AGREEMENTS FOR BENEFIT OF OWNER  
AND OWNER'S AND LESSOR'S ASSIGNS

All rights of the Lessor hereunder (including, but not limited to, its rights under Sections 7, 9, 13, 14 and 17 and the right to receive the rentals payable under this Lease) shall inure to the benefit of the Owner and any of the Owner's assigns under the Trust Agreement and the Lessor's assigns including the Vendor.

The Lessee agrees for the benefit of the Owner that the Lessee's obligations under the Indemnity Agreement shall be considered rights and obligations under this Lease and inseparable therefrom.

SECTION 29. TERM LESSOR OR LESSEE

Whenever the term "Lessor" is used in this Lease it shall apply and refer to the Lessor and any assignee of the Lessor (including, so long as any CSA Indebtedness under the CSA or interest thereon shall remain unpaid or any other obligation thereunder be continuing, the Vendor).

SECTION 30. FINANCE LEASE ELECTION

The Lessor and the Lessee hereby elect to have the provisions of Section 168(f)(8) of the Internal Revenue Code apply with respect to this Lease. The Lessor and the Lessee hereby agree as provided for in said Section 168(f)(8) that this Lease shall constitute and be characterized as a Lease, and that the Lessor shall be the lessor, the Owner shall be the owner and the Lessee shall be the lessee, of the units of Equipment for Federal tax law purposes. The Lessee further agrees to prepare in a timely and proper manner, and the Lessor and the Lessee agree to file, all elections, returns or statements required under said Section 168(f)(8), or any regulations thereunder, and to take any other appropriate actions to have this Lease treated as a lease for Federal tax law purposes. The Lessor and the Lessee further agree that the election pursuant to said

Section 168(f)(8) shall not be revocable without the consent of both the Lessor and the Lessee to such revocation.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

MISSOURI-KANSAS-TEXAS RAILROAD  
COMPANY,

by

[Seal]

\_\_\_\_\_  
Vice President

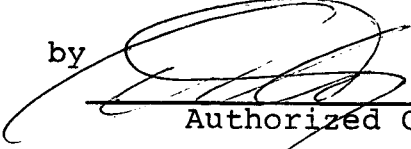
Attest:

\_\_\_\_\_  
Assistant Secretary

THE CONNECTICUT BANK AND TRUST  
COMPANY, NATIONAL ASSOCIATION,  
as Trustee as aforesaid,

by

[Seal]

  
\_\_\_\_\_  
Authorized Officer

Attest:

  
\_\_\_\_\_  
Authorized Officer

STATE OF TEXAS, )  
 ) ss.:  
COUNTY OF DALLAS,)

On this            day of April 1984, before me personally appeared            , to me personally known, who, being by me duly sworn, says that he is a Vice President of Missouri-Kansas-Texas Railroad Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

\_\_\_\_\_  
Notary Public

[Notarial Seal]

My Commission expires

STATE OF CONNECTICUT, )  
 ) ss.:  
COUNTY OF HARTFORD, )

On this <sup>9th</sup> day of April 1984, before me personally appeared **DONALD E. SMITH** to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of THE CONNECTICUT BANK AND TRUST COMPANY, NATIONAL ASSOCIATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation and that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

  
\_\_\_\_\_  
Notary Public

**PATTY A. LYNCH**  
**NOTARY PUBLIC**

MY COMMISSION EXPIRES MARCH 31, 1987

[Notarial Seal]

My Commission expires



# APPENDIX A TO LEASE

<u>Type</u>	<u>Builder</u>	<u>Builder's Specifi- cations</u>	<u>Builder's Plant</u>	<u>Quantity</u>	<u>Lessee Road Numbers (Both Inclusive)</u>	<u>Estimated* Unit Base Price</u>	<u>Estimated* Total Base Price</u>	<u>Estimated Time and Place of Delivery</u>
3,700 h.p. Model GP-39-2 diesel- electric loco- motive	EMD	8075	McCook, Illinois	8	MKT 360-367	\$ 822,300	\$ 6,578,400	February-May 1984 at Parsons, Kansas

---

\* Includes prepaid freight of \$3,700 per Unit to McBaine, Missouri.

## APPENDIX B TO LEASE

### Basic Lease Rates

<u>Date</u>	<u>Percentage of Purchase Price*</u>
9/15/84	2.70700%
12/15/84	2.70700%
3/15/85	2.70700%
6/15/85	2.70700%
9/15/85	2.70700%
12/15/85	2.70700%
3/15/86	2.70700%
6/15/86	2.70700%
9/15/86	2.70700%
12/15/86	2.70700%
3/15/87	2.70700%
6/15/87	2.70700%
9/15/87	2.70700%
12/15/87	2.70700%
3/15/88	2.70700%
6/15/88	2.70700%
9/15/88	2.70700%
12/15/88	2.70700%
3/15/89	2.70700%
6/15/89	2.70700%
9/15/89	2.70700%
12/15/89	2.70700%
3/15/90	2.70700%
6/15/90	2.70700%
9/15/90	2.70700%
12/15/90	2.70700%
3/15/91	2.70700%
6/15/91	2.70700%
9/15/91	2.70700%
12/15/91	2.70700%
3/15/92	3.308555%
6/15/92	3.308555%
9/15/92	3.308555%

---

\* As defined in paragraph 4.1 of the CSA.

<u>Date</u>	<u>Percentage of Purchase Price</u>
12/15/92	3.308555%
3/15/93	3.308555%
6/15/93	3.308555%
9/15/93	3.308555%
12/15/93	3.308555%
3/15/94	3.308555%
6/15/94	3.308555%
9/15/94	3.308555%
12/15/94	3.308555%
3/15/95	3.308555%
6/15/95	3.308555%
9/15/95	3.308555%
12/15/95	3.308555%
3/15/96	3.308555%
6/15/96	3.308555%
9/15/96	3.308555%
12/15/96	3.308555%
3/15/97	3.308555%
6/15/97	3.308555%
9/15/97	3.308555%
12/15/97	3.308555%
3/15/98	3.308555%
6/15/98	3.308555%
9/15/98	3.308555%
12/15/98	3.308555%
3/15/99	3.308555%
6/15/99	3.3085638%

APPENDIX C TO LEASE

Casualty Values

<u>Casualty Payment Dates</u>	<u>Percentage of Purchase Price*</u>
9/15/84	102.3820232
12/15/84	104.4656833
3/15/85	106.4302212
6/15/85	108.2967131
9/15/85	107.0161155
12/15/85	108.5291482
3/15/86	109.9029110
6/15/86	111.1436434
9/15/86	109.2182239
12/15/86	110.0701451
3/15/87	110.7658045
6/15/87	111.3074473
9/15/87	108.6586401
12/15/87	108.7599547
3/15/88	108.6735538
6/15/88	108.4034131
9/15/88	104.9129145
12/15/88	104.1385924
3/15/89	103.2401129
6/15/89	102.2868255
9/15/89	98.3796177
12/15/89	97.3751690
3/15/90	96.3454091
6/15/90	95.2894078
9/15/90	94.2106201
12/15/90	93.1044371
3/15/91	91.9896606
6/15/91	90.8780954
9/15/91	89.7869291
12/15/91	88.6810745
3/15/92	86.9559462
6/15/92	85.1865357
9/15/92	83.4111030

---

\* As defined in paragraph 4.1 of the CSA.

Casualty  
Payment Dates

Percentage of  
Purchase Price

12/15/92	81.6060048
3/15/93	79.7703403
6/15/93	77.8916847
9/15/93	76.0072980
12/15/93	74.0918681
3/15/94	72.1444624
6/15/94	70.1518133
9/15/94	68.1538167
12/15/94	66.1234245
3/15/95	64.0596759
6/15/95	61.9484138
9/15/95	59.8323656
12/15/95	57.6826337
3/15/96	55.4982340
6/15/96	53.2640649
9/15/96	51.0258907
12/15/96	48.7528421
3/15/97	46.4439186
6/15/97	44.0830171
9/15/97	41.7191604
12/15/97	39.3193798
3/15/98	36.8826675
6/15/98	34.3958763
9/15/98	31.9442974
12/15/98	29.5263735
3/15/99	27.1447828
6/15/99	24.8572837